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ABSTRACT

Intended to aid administrators, decision-makers, and the general public in learning about and gaining better understanding of Hispanic concerns, needs, and recommendations regarding justice administration, this document includes the keynote addresses and 15 topic papers presented at the conference which was attended by 91 law enforcement experts. The 15 papers were presented at 5 workshops on police, courts, corrections, juvenile justice, and undocumented workers. Proceedings for each workshop include a summary, three papers presented, formal policy recommendations, and a list of participants. Papers focus on data gaps; revision of legislative, judicial, and administrative policies; impact of national strategies on the national and local level law enforcement and criminal justice systems; psychological testing of incarcerated Hispanics; bilingual programming as a viable alternative in corrections; re-entry and support services for Hispanic offenders; use of physical force by police; police abuse and political spying; self-assessment of police; punishment for Latinos; language barriers in the criminal justice system; impact of the criminal justice system on Hispanics; the juvenile justice system and the at-risk Hispana adolescent and the economically disadvantaged Hispanic youth; alien material witnesses and the law; transition from undocumented to documented by way of the judiciary; immigration law; and the juvenile justice system and the Hispanic community. (NQA)

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Shoreham Hotel
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A REPORT FROM THE NATIONAL HISPANIC CONFERENCE
ON
LAW ENFORCEMENT AND CRIMINAL JUSTICE

JULY 28-30, 1980

WASHINGTON, D.C.

* * * * *

This conference was supported by Contract Number J-LEAA-011-80 awarded to InterAmerica Research Associates, Inc. by the Law Enforcement Assistance Administration, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

Points of view or opinions stated in this report are those of the author's and participants and do not necessarily represent the official position or policies of the U.S. Department of Justice or InterAmerica Research Associates, Inc.

ACKNOWLEDGMENTS

The Law Enforcement Assistance Administration (LEAA) wishes to gratefully acknowledge the generous contributions of many people who assisted in the planning of the National Hispanic Conference on Law Enforcement and Criminal Justice.

A contributing wealth of assistance was Ms. Peggy Triplett, Special Assistant for Minorities and Women, LEAA; Mr. Efrain Lopez, Program Coordinator, LEAA; Mr. Lupe Salinas, Special Assistant to the Attorney General, Department of Justice; Ms. Laura Wilmot, Equal Opportunity Specialist, Justice Management Division, Department of Justice; and the Hispanic members: Ms. Pat Vasquez, Claremont, California; Mr. Freddy Costales, Miami, Florida; Mr. Sal Baca, Los Angeles, California and Mr. Guarione M. Diaz, Miami, Florida, of the National Minority Advisory Council on Criminal Justice for the Office of Justice Assistance, Research and Statistics.

The Law Enforcement Assistance Administration would like to commend the Conference management staff provided by InterAmerica Research Associates, Inc. of Rosslyn, Virginia. The company's professional expertise contributed to the success and impact of this Conference with regard to Hispanics and the Administration of Justice. Special thanks to Mr. Juan J. Gutierrez, President of InterAmerica, for being the Master of Ceremonies at the Conference luncheon, Mr. Rodolfo Hernandez, Conference Director, Madonna McGwin, Esquire, Conference Coordinator, Lorraine Valdez-Pierce, Logistics Specialist, and Sherry Green, Administrative Assistant.

The Law Enforcement Assistance Administration applauds the sincerity and commitment of the moderators, presentors and participants for making their Conference a successful one. Their participation and input in the development of formal research, program and policy recommendations, as they affect Hispanics, will undoubtedly contribute to the Administration of Justice in this nation.

Finally, the General Assembly of this Conference wishes to request the support of key decision makers whose agencies or organization's policies impact on national, state, and local community issues in the planning and implementation of the recommendations that were formalized in this national gathering of Hispanic experts in law enforcement and criminal justice.

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PREFACE

The absence of adequate information about Hispanics in the criminal justice system, coupled with recent reports of injustices perpetrated on Hispanics by the criminal justice system, prompted a decision by the Law Enforcement Assistance Administration to sponsor a National Hispanic Conference on Law Enforcement and Criminal Justice.

LEAA is aware that for too long Hispanics have struggled to influence policy making in the Administration of Justice. Hispanics are disproportionately represented in numbers of arrests, numbers of convictions and by numbers of inmates in correctional institutions. They fail to receive appropriate support services while incarcerated and as a result have one of the highest recidivism rates among any ethnic group. There are few Hispanics in positions of power where they could be a potent force in developing the strategies for resolving these inequities. This underrepresentation must be corrected through proper affirmative action programs that would insure upward mobility and better access to the decision-making process in the Administration of Justice. The Law Enforcement Assistance Administration supports these efforts.

During this first National Hispanic Conference on Law Enforcement and Criminal Justice, participants were urged to develop a comprehensive strategy that would assist Hispanics in resolving the unique problems they confront within the Criminal Justice System, especially at the local and state levels.

Homer F. Broome Jr.

Homer F. Broome, Jr.
Administrator
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INTRODUCTION

It has been eight years since Hispanics from across the country first gathered to discuss common problems. That initial meeting produced much discussion on issues readily apparent to most Hispanics: Police/Hispanic relations; Hispanics in corrections, and Employment and Training opportunities for Hispanics. Since then there have been numerous conferences, seminars, and symposiums aimed at particular problem-areas for the Hispanic population.

The range of the problem has become known through the efforts of all those who have participated in these conferences over the years. We are now aware of the extent to which Hispanics are affected by: the lack of funding for Hispanic programs; excessive use of deadly force by Police; community crime prevention; bilingual and bicultural training programs for professional staff and non-English speaking inmates in institutions at the federal, and state levels; the lack of research by Hispanics on Hispanics; and the lack of Hispanic data in arrests, courts, prisons and victims of crime.

The time was ripe for Hispanics to take a stand on these issues. The problems had been identified. Now it had become our duty to suggest viable solutions to the problems. A forum for this was needed. In recognition of this, the Law Enforcement Assistance Administration sponsored the first National Hispanic Conference on Law Enforcement and Criminal Justice. The Conference was held in Washington, D.C., the nation's capital. Administrators and decision-makers involved in Hispanic affairs were invited to discuss the issues, and, more importantly, formulate realistic, but progressive policy recommendations to alleviate the problems.

What follows are the results of that conference. A lot of hard work is reflected on the pages of this report. The conference participants are solely responsible for the success of the conference and they must take the initiative to carry forth the objectives which resulted from their success.

The Organization of the Proceedings

The Keynote speeches and addresses made at the conference by such people as Mr. Gilbert Pompa, Director, U.S. Department of Justice, Community Relations Service; Ambassador Esteban Torres, Special Assistant to the President for Hispanic Affairs, The White House; Congressman Robert Garcia, (D) New York; Congressman Edward R. Roybal, (D) California, Chairman, National Association of Latino Elected and Appointed Officials, (NALEO); and Ms. Annie Gutierrez, District Director, Immigration and Naturalization Service, American Embassy, Mexico D.F. in regards to Hispanics and the Administration of Justice are set forth in the first section of this report.

The conference guests participated in five selected workshops: (1) Police; (2) Courts; (3) Corrections; (4) Juvenile Justice; (5) Undocumented workers. Three papers on each topic were presented to the conference and served as a basis for discussion. Each workshop had a moderator leading the discussions. Participants represented a wide cross-section of disciplines and experiences in the criminal justice system. A core group numbering ninety-one included experts in the fields of law enforcement, attorneys, judges, probation and parole administrators, elected officials, commissioners, juvenile delinquency administrators, community leaders, and Presidents of National Hispanic Law Enforcement and Criminal Justice Organizations.

As building blocks for the conference, the workshops produced in depth discussions of the fifteen topic papers included in Part II of the proceedings. Emphasis was placed on major problems, data gaps, revision of legislative, judicial and administrative policies, program expansions, and national strategies as they impact on the Law Enforcement and Criminal Justice systems throughout the country on both national and local levels. The proceedings for each workshop feature a summary by the moderator, three presentations by independent presenters, the formal policy recommendations incorporated by each workshop for presentation at the General Assembly, and the list of participants for each specific workshop.

The following outline will provide the reader with an overview of the workshop proceedings:

CORRECTIONS WORKSHOP

"PSYCHOLOGICAL TESTING OF INCARCERATED HISPANICS"
Presented by: Marcella De La Torre, Ph.D.

"BILINGUAL PROGRAMMING: A VIABLE ALTERNATIVE IN CORRECTIONS" -- Part A
Presented by: Agenor L. Castro

"BILINGUAL PROGRAMMING: A VIABLE ALTERNATIVE IN CORRECTIONS" -- Part B
Presented by: Paul Garcia, Jr.

"EXPLORING THE RE-ENTRY AND SUPPORT SERVICES FOR HISPANIC OFFENDERS"
Presented by: Monica Herrera Smith, M.P.A.

POLICE WORKSHOP

"THE USE OF PHYSICAL FORCE BY POLICE -- A PERENNIAL CHICANO COMMUNITY DILEMMA"

Presented by: Angel M. Alderete

"POLICE ABUSE AND POLITICAL SPYING: A THREAT TO HISPANIC LIBERTY AND GROWTH"

Presented by: R. Samuel Paz, Esquire

"SELF-ASSESSMENT OF POLICE"

Presented by: Louis W. Moreno

COURTS WORKSHOP

"PUNISHMENT FOR LATINOS, IS IT FAIR?"

Presented by: Steven P. Sanora, J.D.

"LANGUAGE BARRIERS IN THE CRIMINAL JUSTICE SYSTEM: A LOOK AT THE FEDERAL JUDICIARY"

Presented by: Carlos Astiz, Ph.D.

"IMPACT OF THE CRIMINAL JUSTICE SYSTEM ON HISPANICS"

Presented by: John Carro

JUVENILE JUSTICE WORKSHOP

"A CASE OF BENEIGN NEGLECT: THE JUVENILE JUSTICE SYSTEM AND THE AT-RISK HISPANA ADOLESCENT"

Presented by: Frances M. Herrera, J.D.

"THE JUVENILE JUSTICE SYSTEM - A RESEARCH PAPER ON HOW IT AFFECTS THE HISPANIC COMMUNITY:

Presented by: Miguel Duran, M.P.A.

"THE ECONOMICALLY DISADVANTAGED (HISPANIC) YOUTH IN THE JUVENILE JUSTICE SYSTEM"

Presented by: Enrique Pena

UNDOCUMENTED WORKERS WORKSHOP

"THE ALIEN MATERIAL WITNESS AND THE LAW"
Presented by: Linda Reyna Yanez, Esquire

"THE TRANSITION FROM UNDOCUMENTED TO DOCUMENTED BY WAY OF THE JUDICIARY"
Presented by: Albert Armendariz, Sr.

"IMMIGRATION LAW"
Presented by: Peter A. Schey

The small workshop groups actively continued into the final day in their formulation of recommendations. Each workshop concluded with presentations of these recommendations by each topic moderator to the whole general assembly for its comments and adoption. Heated debates marked the mood of that final session. In the end, there was a consensus on the adoption of all recommendations as amended by the general assembly.

It should be noted that, of all the recommendations, those on police intelligence gathering caused the most disagreement. A large minority of participants, primarily representing Hispanic police officers, let it be known that they dissented from the majority.

Conclusion

This document is meant to serve as a vehicle which legislator, law enforcement and criminal justice administrators, federal agency administrators, organization and community leaders, and the general public may use to learn about, and to better understand the concerns, needs and recommendations of Hispanics regarding the Administration of Justice in this country.

The true impact and success of the conference will depend on the conviction and determination of its participants, legislative representatives and key decision makers and administrators who must act on the recommendations developed at the conference as they impact on Hispanics and the Administration of Justice.

WELCOME

By:

Peggy Triplett
Special Assistant for
Minority and Women's Affairs,
Law Enforcement Assistance Administration

Prepared for:

National Hispanic Conference
on
Law Enforcement and Criminal Justice

The Shoreham Hotel
Washington, D.C.
July 28-30, 1980

Good morning and welcome to the nation's capital. LEAA is truly pleased to have received such a good response to this conference call for a National Hispanic Conference on Law Enforcement and Criminal Justice and we are most honored to convene such an impressive body of Hispanic criminal justice policy and decision-makers, state and city officials, practitioners, and other concerned individuals who have interrupted their summer schedules in order to devote the next two and one-half days to a working conference agenda. We trust that your deliberations will not only more clearly define the criminal justice issues and problems affecting the Hispanic community but we would hope that through the individual workshops and meaningful dialogue and exchange of information, you will then develop a comprehensive criminal justice strategy incorporating recommendations and action items that will assist the Hispanic community to impact the decision-making strata of the criminal justice system at the local, state and federal levels.

During your deliberations, we hope that you will take the opportunity to meet and converse with conferees whom you do not know. In addition to our distinguished dias guests, several members of Congress and their immediate staffers will be joining us throughout the Conference. I would also like to mention that the Hispanic members of the National Minority Advisory Council on Criminal Justice--an advisory body to Office of Justice Assistance Research and Statistics (OJARS), Law Enforcement Assistance Administration (LEAA), National Institute of Justice (NIJ), and Bureau of Justice Statistics (BJS) -- have been of tremendous assistance to us in the planning and development of this Conference and are in attendance. Attending, also, are the members of the Attorney-General's Hispanic Advisory Committee, along with Lupe Salinas, Special Assistant to the Attorney-General, those of you with administrative questions and/or housekeeping concerns, i.e.,

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travel or hotel accommodations should direct your concerns to Rudy Hernandez and his colleagues from InterAmerica Associates who are providing the technical and managerial support for the overall Conference activity. Should there be any questions regarding LEAA programs, juvenile justice, or the research and statistics program activity, there will be a number of my colleagues joining with you in your various workshops who will be happy to answer any questions you might have. I should also mention that Efrain Lopez also played a major role in the planning and development of this Conference and is also available to assist you, as well as yours truly.

I want to just briefly reiterate the major goals and objectives of the conference before we break for your individual workshops. As stated in your initial invitation and other conference materials, the primary goal of this conference is to develop formal policy recommendations that will have a positive impact on Hispanics and the criminal justice system. Additionally, we hope that the recommendations to come out of your deliberations will be action-oriented. In other words, that a clearly defined and comprehensive criminal justice strategy will evolve over the next several days that will enable various national Hispanic organizations through their local affiliates as well as the Hispanic community at large to take those recommendations and policy issues that are of particular concern and use to them and begin to initiate constructive discussions and dialog with their local or State criminal justice administrators and officials. Most importantly, it is hoped that these recommendations will be structured in such a way as to assist the Hispanic community in proposing viable solutions and/or alternatives to specific criminal justice problem areas.

In 1972, LEAA through its then-Region Nine office in California sponsored a National Conference on the Administration of Justice and the Mexican American in Phoenix, Arizona. If I may, I'd like to take this opportunity to quote just briefly from Chairman Mario Obledo's opening remarks since they - now eight years later - are so apropos and relevant to the goals of this particular conference which includes all segments of the Hispanic community.

> Let me caution that this forum should not be used strictly for the purpose of reiterating the problems. We are painfully aware of their existence and of their magnitude. It is the purpose and scope of this conference and its ultimate responsibility to inform the persons in charge of the agencies that comprise the administration of justice system what the chicano proposes as solutions to the problems.

I might add, many of our conferees today participated in that conference eight years ago including the then-New York State Senator Robert Garcia now United States Congressman from New York, as well as then-Captain Ruben Ortega, Phoenix Police Department and now Chief of Police, Phoenix Police Department.

In a few minutes we will be breaking up into 5 specific workshop areas - Police, Courts, Corrections, Juvenile Justice, and Undocumented Workers. Topical papers will serve as the focal point of discussion but should not in anyway limit your discussions, although you should keep the focus within the particular criminal justice discipline to which you are assigned.

This is your conference and we hope that all will take an active part in the discussions and development of recommendations.

Since we have invited our distinguished dias guests to say a few words of welcome this morning, I would like at this time to call upon Father Jose Gallego from Chicago, Illinois to deliver the invocation.

AN OVERVIEW OF HISPANIC CONCERNS WITH THE CRIMINAL JUSTICE PROCESS

By:

Gilbert G. Pompa
Director, Community Relations Service
United States Department of Justice

Prepared for:

National Hispanic Conference
on
Law Enforcement and Criminal Justice

The Shoreham Hotel
Washington, D.C.
July 28-30, 1980

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This is a historic meeting. It is an unprecedented gathering of concerned Hispanics who have for the first time come together on a national basis, to deal with serious problems within our country's criminal justice system.

The fact that you are gathered at the nation's capital today indicates not only the level of concern, but also the seriousness of these problems.

They are not only problems that concern each and everyone of us as Hispanics, but they are problems that have great significance for the future of our nation.

I have had occasion to work with most of the people in this room over the last decade. So, I know that we are gathered here for some very serious discussions and sharing of concerns.

Hopefully, out of those shared concerns, there will emerge from this meeting, constructive solutions to the problems, and, above all, a commitment to a continuing dialogue that serves our constituents and our communities across this land.

I think we should begin by underlining the seriousness of the problems that Hispanics perceive they have with the criminal justice system.

It is fair to say that Hispanics generally feel that, compared to their Anglo counterpart:

- If detained by a law enforcement officer, they stand a greater chance of being arrested;
- If arrested, they stand a greater chance of being prosecuted;

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- If prosecuted, they stand a greater chance of being convicted;
- If convicted, they stand a greater chance of receiving a disproportionately longer sentence;
- If sentenced, they stand a greater chance of being denied parole.

What this conference must serve to do, is to come to an open and honest admission that:

- These perceptions exist;
- That they are based on real concerns;
- That these concerns constitute a national problem for Hispanics;
- That we must confront this problem forthrightly; and,
- That we must not leave this conference without having expended our best effort and a commitment made to a renewed dedication that we weill continue the work started here.

The titles that each and everyone of you carry as community leaders in the criminal justice area has made you a part of this historic meeting. If we cannot, in the next few days make an historic united effort at addressing the problems that we face in this area, we are doomed to the consequences of having to re-earn the respect that we have developed within the Hispanic community.

There is and has been for a number of years, a lack of confidence, particularly among Hispanics, in one of the most visible representative of our democratic process, the criminal justice system, most especially at the local level.

I feel confident in saying that this crisis of confidence is a crisis that the Attorney General, as the chief law enforcement officer of the nation, is committed to correct through a balanced approach.

On the one hand, the federal government cannot ignore the fact that it is a partner in local and State efforts to improve the quantity and quality of law enforcement and to increase the responsiveness of law enforcement agencies to the concern of all citizens, particularly minority citizens.

On the other hand, we recognize that there must be vigorous attention given and enforcement commenced against official neglect and misconduct within the criminal justice system that erodes confidence in the process.

This conference is a sincere effort by the department through the Law Enforcement Assistance Administration to provide a forum for constructive approaches to this particular issue.

After 13 years in the race relations business, I have concluded that no single issue has the potential for spurring community conflict than a community's loss of confidence in its criminal justice process.

A process that includes police enforcement, prosecution, the courts and corrections.

We have moved a significant distance away from the stark and depressing characterization of law enforcement as it existed in the southwest as late as 1940.

But we apparently have not yet come far enough to instill sufficient confidence in the notion that dispensation of justice is a fair and effective process for all Americans.

We cannot have a fair and effective system where agencies entrusted with meting out justice are themselves perceived as being unjust.

We cannot have a fair and effective system of justice where those entrusted with carrying out the laws of States and localities abrogate that responsibility and force it on the federal government.

We cannot have a fair and effective system when those most affected by this system do not feel that they have meaningful involvement in a process that literally determines life and death for them on a daily basis.

POLICE

Without a doubt, of the four components of the criminal justice process, the most critical in terms of life and death for Hispanics, involves the police and how they carry out their mission.

Concerns range from allegations of harassment to brutality, to excessive use of force, specifically deadly force, and more specifically, the use of firearms in situations where an officer's life or the life of another is not in danger.

Use of deadly force is a burning issue in many Hispanic communities today. It is an issue that simply will not go away.

The intensity of the problem virtually has resulted in an undeclared war between police and Hispanics in many communities across the nation.

Those of you who labor in the vineyards of human concern know that:

When a mentally ill Puerto Rican in New York is shot 24 times and killed while holding six police officers at bay with a pair of scissors, and ...

When a Chicano is dumped into Buffalo Bayou in Houston, Texas, and drowns after being beaten by four officers,

The repercussions of those acts sweep throughout all Hispanic communities

Increasing the alienation of Hispanics not only from cooperating with law enforcement authorities but from the entire justice process.

Every use of deadly force -- justified or not -- serves to drive a larger wedge between Hispanics and the criminal justice process.

It is an issue that is so deeply felt within Hispanic communities that every such incident holds the possibility of wider and more serious repercussions.

It is a highly complex, emotional and involved issue that will demand a calm dispassionate approach if effective solutions are to be found at this conference.

You must look at all dimensions of the problem during the next few days. From enforcement and employment policies to ultimate accountability at different levels.

PROSECUTION

The first level of accountability for police beyond their own department, is the District Attorney's office, a component of the criminal justice process that has escaped attention by most civil rights proponents.

It is appropriate for us, during this conference, to carefully examine the critical role that this office plays in developing confidence in the criminal justice process.

While I cannot speak authoritatively about some aspects of the criminal justice process, local prosecution is one area that I understand.

Having worked as a prosecutor for over 8 years, I think it is fair to say, based on that experience, that at least at the local level, the common professional interests and pursuits of both police and prosecutors necessarily results in a fraternal relationship between the two.

This relationship may be professionally good for maintaining social order; but, the fact that Hispanics perceive local prosecution of police misconduct to be minimal while incidents reported by the community relations service continue to increase leads to the further perception that this relationship may be compromising the criminal justice process when the victims are Hispanics and the defendants are police officers.

This concern takes on added dimensions when you consider that perceptions of lax local prosecution of police misconduct resulted in at least two violent confrontations within the last 2 years -- Moody Park in Houston after the Jose Campos Torres verdict and Miami after the McDuffie acquittal.

Each perceived inaction is seen by Hispanics as a further failure of the criminal justice system to be responsive to their needs.

Every complaint that goes unanswered or unattended compounds and reenforces this perception.

Heaven forbid that it may eventually lead to the panic reaction of desperate people erroneously, but completely, convinced that justice denied justifies desperate means.

We have a stake in the resolution of this problem and must not allow it to reach those proportions.

Failure on our part to adequately address the prosecutorial process during this conference will leave incomplete a total approach to the problem that Hispanics have with the criminal justice process.

THE COURTS

This total approach must, by necessity, include the courts system.

The most prominent concerns for Hispanics in terms of their relation with the courts system centers on perceptions that they receive disproportionately longer sentences than their Anglo counterparts for similar offenses.

Those of us in the system know that while this may be a generalization, the perception has its impact in the general distrust of the system.

Beyond that, there is a general feeling among Hispanic legal scholars that, without the understanding of Hispanic group culture and behavioral patterns, the judiciary may be deprived of an essential tool necessary to make clear and fair decisions in cases involving Hispanics.

This does not mean to imply that Hispanic judges are better equipped to render decisions in cases involving Hispanic defendants.

It merely suggests that an intimate understanding of barrio values and behavior patterns and of the verbal and non-verbal signals Hispanics send is sometimes necessary to understand the basis for the alleged actions of Hispanic defendants brought before the bar.

CORRECTIONS

Actions that are unfortunately resulting in a disproportionate representation of Hispanics in America's correctional institutions.

It can probably be generally said that the Hispanic offenders' perception of the correctional system was best described by Judge John Carro, who is with us today, as an institution that he or she is caught up in with minimal input into what makes it tick.

Santa Fe and Attica taught us that this combination makes for an explosive situation. If census projections come true, as it appears they will, correctional institutions with significant Hispanic populations, will be in for an even more tense and alienated mood.

While corrections experts predict a large increase in the age groups which have traditionally had high prison incarceration rates (18 to 25), the census bureau projects that in the 80's, Hispanics will form the major segment of this increase.

Our experience at community relations service, based on numerous conflicts that we have handled in correctional institutions across this country, indicates that cultural and language differences between inmates and corrections personnel have been causal factors contributing to serious misperceptions.

It would be irresponsible to say that something positive came from the confrontations that resulted from these disputes, or to excuse senseless violence that ultimately solves nothing.

But it would be equally irresponsible to ignore the warnings of the conflicts -- or to ignore the need to meet the legitimate needs of these institutions.

And most irresponsible of all would be for us to fail to come to a concensus on a national Hispanic approach to this problem during this conference.

Clearly, many of these negative perceptions about our criminal justice system have crept into other areas of Hispanic concern.

And there may be truth to the belief that a society scarred by decades of negative experiences with a particular segment of society's system may find it difficult to escape the negative stereotyping of all systems.

IMMIGRATION

This has apparently been the case regarding Hispanic concern over the immigration enforcement process.

Concerns that include federal enforcement practices as well as local and State efforts.

Efforts that range from detainment to arrest to processing and bail policies.

But, I think it would be most unfair and unwise during this conference to paint all these concerns with the same brush.

Just as alleged police misconduct has accountability at the local level, so too do many of the immigration-related concerns that Hispanics have.

Local enforcement efforts are not sanctioned by the federal government.

Local abuses are as accountable at that level as they are through federal intervention.

This conference must keep in mind the need to separate the levels of accountability as we seek to develop a comprehensive multi-level approach to the overall problem.

So, we at this conference have a serious job to do. Quite literally, peoples lives are at stake.

As we embark on this historic meeting, as we attend plenary sessions and workshops and engage in informal dialogues, I urge you to keep in mind an old Spanish proverb: "La finalidad de la justicia es dar a cada quien lo que se merece."

Our struggle of the 60's concentrated on securing basic social and political rights.

The struggle of the 70's were defensive, largely limited to preserving the gains we made.

If this is to be the decade of the Hispanic, we must dedicate ourselves to the proposition that at least in terms of the criminal justice system, a national approach to Hispanic concerns began this day.

Hispanics have long understood the struggle for survival.

In this, the decade of the Hispanics, we are asking America's institutions to stand up for their highest ideals and noblest aspirations in meeting their responsibilities to all Americans.

And, I know that you share with me the belief that, as in the past, we are prepared to bear any burden, share any cost, or pay any price to insure our status as full Americans.

I leave you with the hope that through your continued vigilence and involvement and the department's assistance, we can, through this conference, help make the 80's truly the decade of the Hispanics.

HISPANICS AND THE CRIMINAL JUSTICE SYSTEM: A CHALLENGE FOR RESPONSIVE AND EFFECTIVE LAW ENFORCEMENT

By:

Esteban E. Torres
Special Assistant to the
President on Hispanic Affairs,
The White House

Prepared for:

National Hispanic Conference
on
Law Enforcement and Criminal Justice

The Shoreham Hotel
Washington, D.C.
July 28-30, 1980

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It is a sincere pleasure to be with you today at this National Conference on Hispanics and the Criminal Justice System. This conference is one more indication of the progress we as Hispanics are making in the area of the study and betterment of the criminal justice system of the United States but it is also a reminder of the challenges that we must continue to confront.

I wish to commend the Law Enforcement Assistance Administration -- the conference managers -- InterAmerica Research Associates but most importantly yourselves the conference participants for tackling the tough issues of sensitizing court systems to be responsive to the needs of all members of the American society: To moving correction systems to rehabilitate an inmate and not be only a mechanism for punishment. I commend you for your commitment in bringing your diverse talents together, so that we may address ourselves to juvenile justice systems that all too often pursue the route of expeditiousness at the price of understanding the root causes that drive some of our youth into conflict with society.

No doubt you will examine the role of police departments in our society. While accepting the very obvious fact that we as a total community require the varied services provided for the protection of the whole we cannot accept the sometimes all too vivid reality that sometimes one segment of that community is treated with a lesser regard for the basic respect due a member of our society. It is to the creation of an awareness of the needs, problems and demands of the Hispanic community that we gather here today.

I am sure that you will agree with me when I say that the sooner we, as a significant element in the mosaic of a national community, focus on these tough issues, the quicker we as a people will make our collective voice heard, not only in the courts, but also in the Congress and in the various State legislatures.

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Although we can attempt to change our criminal justice system through constitutional litigation, this process is expensive, time-consuming and seldom paints with a broad brush. Consequently, we must continue to aggressively pursue our political options.

It is through increased political participation that long-term institutional progress will take effect. Yes, we have made some progress in dealing with our justice system. However, as you can readily tell from the agenda before you, we still have many institutional problems. I am confident that upon your completion of this conference there will be a better focus as to what can be done to make the system more just and equitable to the Hispanic person who comes into contact with it. It is through this targeting of priorities that we as a community will continue to develop and strengthen our abilities to protect the civil rights of all Americans.

In any reflection on the problems involving our justice system, we must no doubt address ourselves to the deprivation of an individual's civil rights either through abusive treatment or the use of greater than necessary force to effectuate an arrest. The area involving police use of greater than necessary force is one of those where progress has been made but too many problems still exist. The first justice department prosecution involving a Hispanic killed during a police arrest occurred in Texas in 1969. Since that time Hispanic community organizations and leaders have done much to make investigators and department attorneys more aware of the unique problems which Hispanics have been encountering in law enforcement matters. It is through an aggressive policy of federal prosecution of police violations of the civil rights of

Hispanics that our confidence in a responsive justice system can grow. Our community must believe we receive equal treatment under the law and that belief must be predicated on fact and not simple public relations.

Let's highlight two areas where your leadership and the leadership of your colleagues has borne fruit.

First, the genesis of civil rights units created to help rectify abuse, and in order to make the federal presence in these cases more evident. Attorney General Benjamin Civiletti has established civil rights units in 37 U.S. Attorney's Offices around the country. Generally the offices selected were those where the minority population was substantial or where there was a significant number of civil rights deprivation complaints. These offices must be strengthened by additional resources and I will work with the Attorney General to achieve this goal.

Second, efforts seeking system-wide relief against police brutality and employment discrimination have generated some positive results. The Department of Justice has initiated a lawsuit against the City of Philadelphia seeking to get the Federal District Court to order the police department in that city to restrain itself from illegal behavior in its hiring practices. A consent decree to this effect was worked out with the Memphis Police Department. This type of change, of course, is more lasting and basic.

Yes, we've made some progress, but we still have challenges ahead. One of those challenges involves language differences. Indeed, one of the most troubling areas for Hispanics is the failure of the criminal justice system to consider the unique linguistic differences which Hispanics possess. If a person accused of a crime, is deaf, there is no question but that a sign language interpreter will be appointed to communicate to that person. What is so different if an American whose dominant language is Spanish is in the place of the deaf person. Nothing! Ninguno tiene la abilidad de entender el Ingles. Neither is able to understand English.

The only realistic thing to do is to change the system and not the person. It is much easier to have a trained interpreter avilable in the court room than to expect the deaf person to learn to hear or the Spanish-speaking person to learn English in time for his trial.

This topic brings to mind a very unnecessarily tragic story. Less than two weeks ago in a Boston suburb which has a significant Hispanic population, two non-Hispanic officers stopped two Spanish-speaking Puerto Ricans. Of the 72 officers in the department, none are Hispanic. None of the patrol officers are able to speak Spanish. After some frustrating efforts at communicating, a scuffle developed and two persons -- a 17-year police veteran and a young Hispanic -- are now dead after a single traffic stop that developed into more. What we are talking about is fundamental to due process of law -- an opportunity to be heard.

CONCLUSION

While there are many other tragedies that occur, that is but a mere example of the failure of the law enforcement and criminal justice system to adjust to a changing society that is becoming significantly Spanish-speaking. The United States is the 5th largest Spanish-speaking country in the world. It is time that our governmental leaders recognize that fact in the decisions which are made and in the methods utilized in our police institutions, and in our other governmental offices of immense importance to the administration of justice, federal judicial system and Supreme Court.

This conference can have as its goal an agenda for change. It can *help set* the priorities, and then *we*, *together*, can go forward and continue the battle for a more responsive criminal justice system.

PRESENTATION

By:

Congressman Robert Garcia
(D) - New York

Prepared for:

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I would like to stress, at the outset, that though I have a very active and ongoing interest in the involvement (positive and negative) of Hispanics in the criminal justice system, I can claim little credit for the tremendously informative studies that are being done by many of the very same fine people sitting here this evening. For the pleasure of being able to stand here and briefly dwell upon your thoughts, I thank you. And I implore you -- for the good of the Hispanic community, and the great country of which we are all a part -- to keep those reports, statistics, and those written expressions of your concern for the plight of 12 million Hispanics in the U.S. coming in.

I would often sit and think about a situation I felt was swelling to uncomfortable proportions -- Hispanics trapped in a criminal justice they could barely understand -- and would think to myself that, like all growing problems that go unanswered in our society, the situation would one day build to a boiling point and erupt into a very unfortunate and inevitable conflict. Then came a very fateful day in the history of our justice system -- February 2, 1980. For the one or two of you who might not remember, this was the occasion of the New Mexico prison riots -- an unbelievably grotesque drama with equally gruesome implications. The system isn't working -- at least as it should be. What is it that we can do to lessen the threat of a repeat of this type of horror? What are we doing wrong that we should be doing right?? What are we doing right that we should be doing better?? When, in short, does the dehumanizing end, and the rehabilitation begin? I realize these are a lot of wide questions with an equally varied array of answers, but we must begin somewhere, and we must do it quickly.

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I know that many will agree with me when I stress that the key to a more effective and sensitive criminal justice system lies not in unreliable headcounts or "educated guesses," but in statistics. The information presently available on Hispanics in the system is meager, if non-existent. It is very easy for us to look back with the benefit of 20-20 hindsight, and look for crucial statistics after blood has been spilled--as in the case of New Mexico. In short, in the future, before we even think about rehabilitation, we need to know exactly who it is we're dealing with. That's not just good corrections policy...It's good common sense!

It wasn't until New Mexico had happened that the State knew what had to be done. Governor Bruce King allotted $82 million to the corrections system: $10 million to make the prison habitable again; 2.9 million to raise the starting pay of guards; and 44.6 million for a new maximum security prison. Now the "powers that be" look back, almost as an afterthought, and search for statistics... percentages we don't like to see. Of the 33 or more inmates who were beaten, and tortured to death, 63 percent had Spanish surnames. And yet I can still recall reading, and I quote, "The killings did not appear to have any racial aspect." I am tired of these hindsight statistics...the time is long overdue for preventative facts and figures. We have a need to know what it was at the New Mexico Prison that so dehumanized these men as to make them tear upon one another's bodies. Such figures are more than favorable, they are demanded!

HISPANICS IN THE SYSTEM: THE NUMBERS

The number of Hispanic and Spanish speaking offenders throughout the U.S. is growing at an alarming rate, especially in New York, Texas, California, and Florida, where the Hispanic populations are greater. Needless to say, the rapid growth of Hispanics caught in an already overburdened system has led to some serious problems. On the offender side-Hispanics in New York City constitute betwween 22 and 33 percent of all criminal offenders arraigned yearly; 23 percent of the 500,000 plus annual felony arrests.

SOME PROBLEMS WITH THE RAPID GROWTH OF HISPANICS IN THE SYSTEM:

- A corrections system few will understand; a complex that requires massive infusions of money. Nearly 1½ million will come into contact with it this year.
- It has led to the resident's feeling of uselessness, unimportance, and boredom since there are few or no special programs aimed at him, and at the Hispanic cultural experience.
- There is the problem of undocumented aliens, whose institutional problems can be even more heart-rendering than the native-born Hispanic. New York State prisons, for example, now hold about 300 undocumented aliens. They are seldom visited; seldom asked to participate in special programs, and since we receive so little cooperation from foreign consulates, their only recourse is forcible deportation.

This brief listing is just a "hair in the soup" in the way of any comprehensive listing of such roadblocks to the Hispanic in the criminal justice system.

EMPLOYMENT OF HISPANICS IN THE CRIMINAL JUSTICE SYSTEM:

This problem spans both sides of the corrections field, to include a severe lack of Hispanic recruitment. Many Hispanic inmates do not speak any English at all. Bilingual and bicultural classes--as has been suggested severe lack of Hispanic recruitment. Many Hispanic inmates do not speak any English at all. Bilingual and bicultural classes--as has been suggested by Mr. Agenor Castro many times, are sadly absent. Even the LEAA, an invaluable source for the funding of such neglected programs, is being continually cut by an increasingly budget-minded Congress, cuts that I am always distressed to see passed on the floor.

In this regard, we need incentives to bring more Spanish-speaking personnel into these institutions. Statistically, the problem doesn't appear to be as severe in the big city institutions...it's the facility "in the boondocks" that suffers most. It is indeed curious, when considering the amount of Hispanics presently involved in the system, that out of some 165,000 people presently employed in corrections only 3.3 percent of them are Hispanic. At one facility that I have in mind--a facility with a very large Hispanic inmate population--less than one percent are Hispanic.

I have heard all the explanations about why there are such a low number of Hispanics in corrections--every fairy tale from Hispanics having an aversion to taking tests, to Hispanics "traditionally" not being interested in working for the government..everything from bugging, to spys under the bed. They are merely paltry excuses for not hiring Hispanics, not legitimate reasons.

POTENTIAL SOLUTIONS

During the first part of my remarks to you I mentioned some of the basic problems coming out of the lack of resources and statistics about the Hispanic in the criminal justice system. In order to improve our communities, to monitor the success of Hispanics in the system, to determine their basic needs, and in order to use these crucial figures as a basis for Affirmative Action and EEO mandates, we need these statistics. This, I am prepared to admit, will not be an easy task. It will require, at the outset, a definition of who is Hispanic, something that is rarely considered in society.

- Names are misleading. Garcia, for example, is not always of Hispanic origin.
- Color can be a poor factor.
- Many so-called "White" inmates may have non-Hispanic surnames, but have a mother or grandmother who is Hispanic.
- A "WASP" can be born anywhere on this earth, not just England or the U.S. but also Brazil and Puerto Rico.

SOLUTIONS FOR RECRUITING AND RETENTION OF HISPANICS:

I have taken the liberty to study and evaluate some of the "recommendations" suggested by the participants of a conference on "Hispanics in Corrections", held in Dallas last year. I have found many of these proposals to be both timely and realistic.

- In recruitment, for example, we must use all sources of information open to us in order to encourage the Hispanic community and its constituent organizations to participate in the system. This information should be bilingual: pamphlets, Spanish-speaking radio, TV, and newspapers.
- Efforts must be made to let qualified Hispanics know of job openings in the criminal justice system--job placement agencies, paid advertisements.

- We should look into the feasibility of pre-hiring training programs to prepare special workshops for aiding the Hispanic in preparing his application or resume.
- One idea that came out of the conference that I was especially intrigued by was that--by regulation--the Hispanic employee ratio be required to equal the Hispanic inmate population.
- Also, in order to retain those precious few Hispanics that we do draw into the system, the criminal justice system must be willing to make several concessions. We're talking about parity of salary, we're talking about special monetary incentives in order to encourage Hispanics to move and relocate to another area where they are especially needed.
- And, finally, something I am ready to see implemented at this time, mandatory bilingual education services to be provided for non-English speakers, especially in the juvenile justice system. A second avenue along this same train of thought would be for systems to initiate a Spanish-as-a-second-language, and Hispanic cultural and ethnic awareness courses for non-minority staff members. I firmly believe that such course offerings would significantly help bridge the gap between the urban Hispanic, and the predominantly rural white officer.

In these few minutes, I have presented many problems plaguing the issue of Hispanics in the criminal justice system, and I know that many of you can understand why.

- Hispanics are more likely to remain in jail without bail than whites
- They are more likely to be convicted
- They are less likely to receive competent legal representation
- They are more likely to receive harsher sentences
- They are less likely to receive an early parole.

Parole--as you well know--does not always mean "the start of something great" ... it could mean the continuation of past problems, with new crises at every turn. But, like every determined people with a contribution to make to this great society, WE WILL BE HEARD. When we fall, we must stand up and begin again. Racism is not an immutable crime. Few, if any, have come to these shores and have been welcomed. You'd think, however, that after 500 years of excursions to this continent, we would have already earned full acceptance! (Mention how the Japanese have come back from their World War II position.)

The Italians came to America, often armed only with their dreams and aspirations, not at all prepared for a difficult transition to the English language--a transition that made them the brunt of many cruel jokes. They struggled to better themselves, and have made many priceless contributions to this nation. Thus, unfamiliarity with the language need not be a fatal handicap.

I firmly believe that this creature called prejudice...called discrimination... can be beaten. The problem stands before us; our solutions are called for; we must continue:

- To educate ourselves, and the nation in which we live, about who we are and what we have to offer
- To lobby our needs persistently before those who have been traditionally ambivalent to our plight
- To create and maintain strong associations, task forces, and caucuses to outline--on a more specific level--problems and potential solutions of interest to the Hispanic community

Involve other government departments--especially labor and education--in helping us "spread the good word" to all the uninformed. And last, but far from least, we must continue to ACT.

I recall watching a television program--after the tragedy in New Mexico--which involved the views of several New Mexico inmates. The program was the "MacNeil/Lehrer Report". I especially remember one inmate stating that he was tired of better tomorrows that never came; of hopeful promises that never materialized.

We have traditionally found it very easy to say "tomorrow." We have poems about it, books about it, plays and films about it, and even a song about it. But we must stop thinking along the patterns of a program that will bring a better "tomorrow" for all Hispanics. What we need--what the Hispanic community needs, is a better today. This must be our supreme goal, THIS IS WHAT YOU HAVE MY COMPLETE AND TOTAL SUPPORT IN ACHIEVING. This is our dream for ourselves and for our children...a better today. With your continued support and dedication, our total equality, our complete acceptance, can only be ...a today away.

PRESENTATION

By:

Congressman Edward R. Roybal
(D) - California

Prepared for:

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on
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It's a pleasure to be here and welcome you to what promises to be a very fruitful and productive conference. From looking over the program I can see that you will be covering all aspects of the criminal justice system and its relationship to the Hispanic community.

In my opinion, the work that you do here and the work you are doing in your communities has never before been more needed. It's vitally needed because we need to counteract the discriminatory and negative image that has been developed by the media on Hispanics and the criminal justice system. Here in Washington, it seems that every other day one opens up the newspaper and reads headlines indicating Hispanic criminal involvement. From the so-called "Mexican Mafia," to Puerto Rican, Cuban and Colombian involvement in drug traffic -- or, as the press puts it, the "Cocaine Cowboys" -- it would appear that Hispanic involvement in the criminal justice system is confined to the criminal side.

To me it's ironic, that national attention is being placed now on the Hispanic criminal element while the press completely ignores the long-standing negative relationship that our community has had with the criminal justice system. Few realize that many community organization efforts have been undertaken to prevent brutal and discriminatory treatment of our young men and women by the police. One of the earliest neighborhood organizations established in the barrios in this century, for example, had as one of its primary goals "improving relationships between the police and the community." We don't, however, have to go back that far to capture the flavor of how the Hispanic community has been seen by certain prominent individuals within the criminal justice establishment. As a Los Angeles City Councilman, I can still remember Chief of Police William

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Parker in the 1950's stating that juvenile delinquency was more prevalent among Mexican American youth because the "Mexicans today are not too far removed from the wild Indian tribes of Mexico." Incredibly, this sort of attitude was echoed by our nation's chief symbol of law enforcement, the Director of the FBI J. Edgar Hoover, in the 1960's when he stated, "If a Mexican comes at you with a gun or rifle, you don't have to worry. If he comes at you with a knife, watch out."

It's been attitudes like these that have made the Hispanic community-criminal justice relationship so negative. You, however, as experts in this field, know how these historical facts are reflected in today's contemporary situation. You know that while incidents of police-civilian violence are thought of by most as taking place in the Black community, over 200 incidents of police-civilian violence in the Hispanic community were being investigated by the Justice Department just two years ago.

You're well aware of the fact that while Hispanic representation amongst correctional personnel in federal prisons is 5 percent, Hispanic prisoners in the federal correctional institutions constitute an incredible 15 percent of the total prison population. More importantly, you're also aware of the lack of good data that we have on Hispanics in the criminal justice system.

The FBI Uniform Crime Reports, for example, don't breakdown arrests by Hispanics, although they do give you (as is proper) how many American Indian, Chinese and Japanese were arrested. The same situation holds true for information on the average prison terms for Hispanics. We do know that Whites receive an average 41.7 months sentence in federal prison, "others" --

whatever that means -- receive 68.6 months. How do Hispanics compare: We simply don't know.

It's lack of information like this that has made me decide to introduce an amendment to legislation that I passed back in the 94th Congress, Public Law 94-311, which called for better statistical information on Hispanics. This amendment will include the Department of Justice to fall under the mandate of improving its statistical data on Hispanics. Statistical visibility is policy visibility. And I deplore the current situation where the Justice Department is falling short of providing reliable data on our Hispanic community.

Data alone, however, will not accomplish much. We need to have Hispanic professionals such as yourself articulating the types of policy and program recommendations that would benefit our community.

To this end, I would like to inform you of an advocacy organization that is generating a tremendous amount of excitement among Hispanics of Mexican, Puerto Rican, Cuban and other Hispanic descent. This is NALEO. The National Association of Latino Elected and Appointed Officials. The goals of NALEO is simple: Establish an advocacy office here in Washington, D.C. to represent Hispanic concerns in Congress and in all aspects of the Federal policy process. There are more than enough issues to go around. Bilingual Education, the Census, discrimination in employment, all need to be highlighted and championed. Secondly, NALEO will encourage voter registration among members of our communities and furthermore, foster political participation among all Hispanics at all levels of government.

NALEO is an organization that is open to all who support these simple goals. For, as you all know, there are issues affecting the Hispanic community that are not Republican or Democratic issues, not conservative or liberal issues, not Sunbelt versus Frostbelt affairs, but simply issues that affect our community. For this reason, NALEO is a nonpartisan organization.

Furthermore, NALEO is a membership supported organization, not relying on government or foundation funding for its resource base. In fact, NALEO has as one of its fundamental principles the pledge that NALEO will not accept government support. This, ladies and gentlemen, will keep NALEO free and independent in the years to come. NALEO will never be in a position to be "bought off" by a government agency with a multi-year grant.

The concept of a non-partisan, membership based organization committed to advancing the interest of the Hispanic community, has enabled NALEO to expand its membership to over 1,000 members in six short months since our nation-wide membership program began.

NALEO offers a vehicle for your involvement. Certainly, there are other means. As an active leader in NALEO, and as Chairman of the Congressional Hispanic Caucus, I urge you to join this worthwhile effort.

Ladies and gentlemen, my sincere wishes for a productive and meaningful conference. Muchas Gracias.

HISPANICS AND UNDOCUMENTED ALIENS - WILL THOSE WHO ARE NOT INJURED BE AS INDIGNANT AS THOSE WHO ARE?

By:

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District Director,
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Prepared for:

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on
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It has sincerely been a pleasure to see so many old friends again... and so encouraging to meet so many enthusiastic young warriors. I am grateful to the Conference organizers for the invitation to participate.

As you could tell from the generous introduction, I have only worked with the Imigration Service for two years. In the past, I have worked as a criminal defense attorney specializing in police misconduct and civil rights cases in true red-neck country -- Imperial County, California along the Mexican border. During that time, I also served as a court-appointed attorney to defend undocumented persons before the Federal Magistrate. I have therefore been able to view the phenomena of the undocumented migration from very different perspectives.

No matter how you look at it, one thing is certain: The scales of justice cannot balance when a sizeable segment of the population lives in a status outside the law. The very nature of this "illegal" status immediately puts these people in the powerless position of being preyed upon by those who would take advantage of them and exploit them. I believe that we are dutybound, not just as Hispanics, but as human beings, to struggle against these inequities.

We do not know how many undocumented persons are in the U.S., but INS believes that a reasonable figure would be between 4-6 million. While the majority are Mexicans living in the Southwest, the profile is changing. Ever-increasing numbers of other Latinos, Philippinos, Africans, Asians, and Arabs are coming and settling in the Northeast, Midwest, and even the Northwest. It is not unusual for entire families to come. In the San Ysidro-Tijuana area, 3.4 percent of those apprehended are children. In the

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past, the undocumented alien worked in agriculture. This too is changing. In Houston, he works in construction; in New York, he works in the garment industry or in the services; in St. Louis he works in leather tanning; in Washington, D.C. he drives a taxi; in Los Angeles he is in light industry, mattress factories, toy factories, the motor home industry, canneries and food processing; and if Palm Springs were to lose all its undocumented persons, there would be no one left to care for the golf greens, to make the beds, to wash the dishes or to serve the food.

These people come here to find work. They flee desperate economic conditions. In Mexico one-half the population doubles every twenty years. Each year, 800,000 new workers come into the system and there are perhaps only 500,000 new jobs created at best. The petroleum industry offers hope, but it is only just getting started, and it is not labor-intensive. Real and hidden unemployment approaches 60 percent and the inflation rate is around 35 percent.

Many people flee cruel political repression such as we now see in El Salvador. They leave hunger and poverty with the illusion of finding a new life and a new start.

Whether they are an asset as many say, who pay taxes and contribute to our economy, or whether they take jobs from minorities and serve to keep wages and working conditions depressed, as others allege, is not material to this discussion. The fact is that they are here, and that others will keep trying to get here -- and that presence impacts directly on the way they are treated in the justice system; and indirectly on the way others, such as ourselves, are treated.

Border Patrol resources have remained static and the number of attempted entries have been increasing. This, coupled with much greater activity on the part of organized smuggling rings, and with gangs of bandits operating on both sides of the border who rob the aliens, makes the border more violent. In addition, many groups, such as the KKK, will increasingly seek to politicize the border issues in order to further their own agendas.

There are 2,500 persons in the Border Patrol. Of these, 450 are stationed at the busiest crossing point, San Ysidro, near Tijuana. Accounting for three shifts, vacations, sick leave and temporary assignments, this means that there are usually 45 agents patrolling the busiest border at any time. At San Ysidro, they apprehend 1,300-1,700 every day.

It is not unusual for aliens to come in groups of 50 to 300. In the old days, a Border Patrolman could usually trust that the campesino would stop when requested to do so. He would simply shrug and say "mala suerte", "bad luck." The younger, street-wise alien of today is much less likely to be so passive, especially if he is in a group and the Border Patrol Agent is alone.

Increasingly, San Ysidro has been the scene of violent rock-throwing incidents. A group of rock-throwing aliens downed a $300,000 helicopter when a rock hit the tail rotor. When one officer faces a hostile group of 50 people throwing rocks it is only natural for him to feel up-tight, to sense fear, to resort to force that he might not have used under different circumstances.

Furthermore, the morale of the whole Immigration Service has been dangerously undermined by what is perceived as a lack of direction, an unwillingness to grapple with the policy questions, and a feeling that neither government leaders nor the public really care whether the law is upheld or mandated services are rendered. With few exceptions, I have found that immigration and Border Patrol people really want to do a good job. They just feel very confused because they are not sure what that job is. Border Patrol agents believe they are supposed to uphold the law by keeping out the alien, but they feel under-staffed and frustrated because they know they are probably stopping only one in three at best. Lack of funds has resulted in groups of aliens being turned loose because there is no gasoline to move the busses.

With the Iranian and Cuban programs cutting into the budget, much training has been cancelled. Hiring has been frozen. Many offices are doing three times the work with one-half the personnel. No one likes operating in an antiquated system without computers, losing thousands of files in the mail each year. No one is proud of being in the most "caught-up" office when this means he is only two years behind. No one enjoys telling a prospective citizen who has already waited five years, that he should file the application, and then not inquire for at least three more years.

It concerns me that so many people are working under such frustrating conditions and with such low morale. These conditions can lead to mistakes, can make people quicker to anger, to vent their frustrations on the most helpless ones around, the aliens. I am not saying that such activity should be excused or condoned, but I do believe that it is understandable and that action must be taken to vastly improve the situation -- and soon.

Much has been said about police brutality and physical abuse of aliens. There have been allegations against Border Patrol officers and in each case, whether it be verbal or physical abuse, the charge is investigated and if it appears to be founded in fact, the case is turned over to the U.S. Attorney. Indictments have been brought as recently as last week in San Diego against three officers accused of physical abuse and civil rights violations. The reaction from other Border Patrol Agents to the indictments has been unanimously that if the allegations are found to be true, then they should be severely punished.

Under Leonel Castillo many improvements were made in the detention centers; the out-reach program was initialed, and some new regulations were written to insure that aliens would be given lists of available legal services, but there are still some basic problems. Policy and procedures vary from one area to another. Local facilities which are woefully inadequate are still used to detain people in some areas. In some districts, families are broken up and sent home separately; children are put in jails and juvenile facilities; material witnesses are incarcerated for long periods of time; and it appeared from our workshop at this conference that in some jurisdictions, attorneys are not provided for defendants or material witnesses.

Another problem in the area of undocumented aliens is the increasing involvement of alien smugglers. Alien smugglers are not travel agents. They are the scum of the earth who deal in human cargo for a price. They form highly-organized, ruthless rings which make enormous profit. Some rings bring aliens from other parts of the world through Mexico and then across the border. Philippinos pay $2,000-$3,000 to be smuggled through Mexico. Salvadorians are paying $2,000-$8,000 now that the situation is so desperate. In Michoacan, in the town square, one can arrange to be smuggled for $500. Many of the people who come are women and children. The smugglers often rob the aliens, sometimes they abandon them. The women are raped. Small children as young as 12 months old have been abandoned in the bushes on the border when the smuggler has panicked.

The alien usually sells everything he owns and borrows all he can to pay the smuggler. If he is caught, he is sent back home, only to be much worse off than before. Some smugglers keep the alien paying part of every paycheck, long after his arrival -- money extorted in fear of being reported to INS.

Some smugglers lock the aliens up until a union steward or factory foreman comes looking for workers. They pay the smuggler $20 to $50 a head, and then continue to withhold money from each paycheck after the alien is hired. In Los Angeles I saw a chicken coup where aliens were kept locked up by the smugglers. There were from 30-50 men and women there at a time, sleeping on a cement floor, eating rations of tortillas and water, with no sanitary facilities.

The tragedy of the El Salvadorians who died in the desert is not a new story. It was only more dramatic because 13 died at one time. This happens routinely on a smaller scale. People suffocate in vans, they burn up in the trunks of cars that turn over when the smuggler panics. They are robbed and raped and extorted every day.

INS has a few anti-smuggling agents but the effort is woefully inadequate. When smugglers are caught, they come up with cash bail right out of their pockets. If convicted, they seldom get much of a sentence because judges do not regard this offense as serious as they do other crimes such as smuggling drugs.

The undocumented alien, living on the fringes of society, in the shadow of the law is exploited by many others on a daily basis. From unscrupulous landlords to fake Bible salesmen, the barrio is a cesspool crawling with leeches, each one thinking of a new way to take advantage of the undocumented alien, knowing that he is in no position to complain.

Shop foremen, and in California, union stewards in the factories, work together with management to take advantage of undocumented alien labor. The union steward gives him a job for a straight minimum wage -- no overtime; the alien gives the union steward $50 out of every paycheck in return for not being reported to immigration. There are no grievances filed under the contract and if the worker gets hurt on the job he is driven across the border by the steward where he is dumped without medical benefits and with no hassle to the company.

"Notarios" charge exorbitant amounts to fill out INS forms and type letters. The list could go on and on.

There is another large area of abuse which occurs frequently and often leads to serious incidents. That is when local police, not immigration officers, make it their business to harrass people because they look undocumented, or take it upon themselves to enforce the immigration laws. People are stopped without probable cause, illegal searches are performed, often physical abuse or degrading treatment is administered.

Early in the Carter administration, when I was in The White House, we attempted to get the word out to local police that they should not be enforcing the immigration laws. Attorney General Bell stated publicly that local police enforcement of INS law violates the INS law and is constitutionally prohibited. Unfortunately, the practice continues in some jurisdictions and it will die hard, but only as long as we continue to work against it.

Other areas of abuse which are particularly disturbing because they seriously institutionalize the disparate treatment are the legislative actions which exclude undocumented persons from equal access to services, such as the prohibitions on the use of funds for legal services to people who are undocumented, the laws against free education for the children of undocumented aliens, and, in some areas, laws prohibiting the use of public funds for medical services, including emergency treatment to people because they cannot show legal status.

At the moment, it looks as though the courts are sustaining the right of children to an education regardless of their immigration status, but there can be no doubt that these cases will be appealed to the Supreme Court. The significance of these cases for minority communities throughout the United States cannot be overstated. Equally as crucial for minorities generally and undocumented persons specifically is the move to exclude people without legal status from legal services representation. The fact is that the percentage of cases handled by legal services involving undocumented persons is very small, but the impact is enormous. The plaintiffs represent serious abuses and, without legal recourse, there is little hope of correcting the abuses. To deny this large segment of the population access to legal review is the surest way to institutionalize the discrimination and unjust treatment that exists in society. The Texas School Case would not have been brought had this prohibition been in effect.

Speaking on a personal level, I believe that the following recommendations should be considered as a minimum if we are to begin dealing with the reality of the undocumented migration:

1. We must adopt a policy that regulates the flow, legalizes those who are here, and set up an automatic statute of limitations that will permit legal status after living here for a period of time.

2. The Immigration Service must be modernized. Computerized record-keeping systems and procedures must be made a priority.

3. The Immigration Act and procedures must be revised to eliminate antiquated sections. Regulations must be written to insure uniform application with less arbitrary exercise of discretion.

4. Hispanics can no longer take the position that the INS is the enemy and simply criticize. We should actively work towards improving the Immigration Service and support those in Congress who would give it the resources and personnel to do a credible job.

5. U.S. Attorneys, Magistrates, Federal Defenders, and U.S. Immigration must be approached and confronted with the facts where conditions of detainment require change.

    - Families should not be deported separately, or at least without full knowledge of what is occurring.

    - Children should not be housed in jails.

- Alternatives such as video taping, and stipulations must be used to ensure that material witnesses do not remain in custody for long periods of time.

- Efforts should be made to contract with private groups such as in San Diego with the Salvation Army and Catholic Family Services to house female and children material witnesses in community facilities and private homes.

- Efforts against the organized rings of alien smugglers should be supported and INS and the Attorney General should be told that we view this as a priority item in the budget.

- Efforts such as the Operacion Estafadores run by the Los Angeles Police Department (LAPD) in the barrio should be encouraged, and we should expand these efforts to other areas. In Los Angeles, two LAPD officers operate in a barrio storefront where they receive complaints from people when they are extorted or cheated, without asking for documentation. They handle those that encompass criminal action and set up referrals for those who can be helped by another agency. We must recognize that funds for these kinds of programs are scarce and will likely disappear. We must, therefore, begin to think of ways to do these out-reach programs ourselves, calling upon our own community and service organizations, volunteers, religious groups, and youth groups. We must learn self-help and taking care of our own because we cannot depend on government programs.

- Continued efforts by the Attorney General and U.S. Attorneys should be directed at local police agencies to prohibit them from using the immigration law to do what they would not otherwise be able to do.

- Immediate and vigorous federal prosecution of those who use excessive force of abuse authority must be insisted upon in every case and we, as a community, must continue to be united and vigilant and use political pressure when necessary to ensure action.

- Prohibitions on the use of funds for legal services and education to people based on immigration status must be fought and defeated.

- As Hispanics, we know we are not one homogeneous group, but many, with a range of opinions and positions. Increasingly, we will have to present a united front. We cannot allow ourselves the luxury of divisiveness.

I hope I'm wrong, but I feel apprehensive about the future. The country has moved far to the right. As inflation and unemployment grow, extremism raises its ugly head. The Democratic Congressional candidate from my district in California wears the sheet of the Grand Dragon in the Ku Klux Klan. There is much uneasiness about what is perceived as the threat of bilingualism and biculturalism. Restrictions on legal services and education are symptomatic of these times. I am nervous about another period in history when people look for scapegoats and facile solutions. If the alien becomes the focus of vitriolic propaganda, we are all challenged and put to the test.

An ancient Greek philosopher was asked: "When will there be Justice in Athens?" He answered, "When those who are not injured are as indignant as those who are." It is all too easy for the weak and the powerless to be bullied by the Hannigans of the world. Will there be justice in America? Will those who are not injured be as indignant as those who are? We cannot expect to find equity and justice for ourselves in a society where these are denied to others.

Bad laws, unfair laws, and laws unevenly enforced lead to basic ruptures of faith and confidence. Will we be indignant about the Border Patrolman who uses excessive force? About an alien who smashed the skull of a Border Patrolman with a rock? About an agency that faces massive backlogs and tremendous work increases with fewer resources? About people who might be excluded from legal representation? About the smugglers? Will we be indignant about all the other indecencies mentioned here at this conference?

In America, as in ancient Greece, there will be justice only when those who are not injured are as indignant as those who are.

CORRECTIONS WORKSHOP

Moderator

Maria Gomez Daddio, M.P.A.
Volunteers of America
Los Angeles, California

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"PSYCHOLOGICAL TESTING OF INCARCERATED HISPANICS"

Presented by:

Marcella De La Torre, Ph.D.
Clinical Psychologist
Fred C. Nelles School
California Youth Authority
Whittier, California

"BILINGUAL PROGRAMMING: A VIABLE ALTERNATIVE IN CORRECTIONS"

(Part A and B)

Presented by:

Agenor L. Castro
Special Advisor, Intergroup Relations
New York State Department of Correctional Services
Albany, New York

and

Paul Garcia, Jr.
Senior Investigator, Office of Inspector General
New York State Department of Correctional Services
Albany, New York

"EXPLORING THE RE-ENTRY AND SUPPORT SERVICES FOR HISPANIC OFFENDERS"

Presented by:

Monica Herrera Smith, M.P.A.
Program Coordinator, Probation Department
County of Los Angeles
Los Angeles, California

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PSYCHOLOGICAL TESTING OF INCARCERATED HISPANICS

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INTRODUCTION:

The high incarceration rates of Hispanics during the past decade are alarming and are causing great interest in the factors that are contributing to this increase. Concerted efforts must be made not only to study the community issues involved but also to study the institutional processes that the inmates and juveniles face throughout their incarceration period. One such process that needs to be scrutinized and documented is the practice of the psychological testing of incarcerated Hispanics.

Psychological testing throughout prison and juvenile facilities is common place, but upon examining the literature one finds that very little has been documented as it relates to Hispanics. The purpose of this paper, then, is to focus attention on this crucial issue and to explore some of the problems involved in the psychological testing of incarcerated Hispanics. Some of these problem areas include the internal problems of the tests themselves, cultural and language issues, the lack of bilingual-bicultural examiners, and the lack of confidentiality of psychological records and the damaging results of present testing techniques for many incarcerated Hispanics.

THE PURPOSES AND USES OF PSYCHOLOGICAL TESTING:

A psychological test can be compared to a snap shot in that it captures the responses of an individual in a certain situation and conveys an impression of that individual. The professional decisions based on such an impression may be crucial to a person's well-being. The test itself is only a sample of the universe of possible human traits, but inferences about the person are made from the test sample of traits.

The optimal use of psychological testing occurs in the atmosphere of a trusting relationship between the client and therapist where the test reveals

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information about the person that is not subjectively evident and which serves to confirm clinical observations. Such information can be very helpful in developing a treatment plan. The purpose of psychological testing, then, is to assess the problem, make a diagnosis, develop, execute, and evaluate a treatment plan and to repeat this cycle wherever necessary in order to achieve the treatment plan.

However, in the impersonal reception centers of correctional and juvenile facilities, personality, intelligence, vocational, and aptitude tests may be administered in large groups. The main purpose of personality tests used here is to differentiate individuals who may demonstrate signs of gross psychopathology such as schizophrenia, paranoia, psychotic depression, and excessive degrees of impulsivity and hostility, so that these "dysfunctional" individuals can be further screened for medical-psychiatric units. Generally, the intelligence, vocational, and aptitude tests are used for job and vocational training classifications for adults and for educational classifications for juveniles. These tests also screen out the mentally retarded offenders. According to one psychologist at the California Institution for Men, testing results play a minimal part in the final decision making regarding pre-sentencing and custody recommendations and that greater emphasis is placed on criminal history and the estimated degree of threat. However, according to the Pinto Research Association of Los Angeles, the results of psychological tests are key determining factors for custody determinations, job classifications, and institutional assignments, and Hispanics are disproportionately and almost invariably relegated to menial jobs in maximum security institutions where they serve time in the programs with the least access to job and educational opportunities. For juveniles, psychological test results are also determining factors regarding custody and institutional and educational placements. Disproportionate numbers of Hispanic youth are also clustered in the institutions with the least educational and vocational opportunities.

Psychological tests may be used at different times and in different departments of correctional and juvenile facilities. Some of these include the following

1) in reception centers prior to sentencing;
2) in reception centers prior to custody determinations after sentencing;
3) in medical-psychiatric units (in-patient) of correctional and juvenile facilities;
4) in counseling units (out-patient) of correctional and juvenile facilities;
5) in the academic centers of juvenile facilities; and
6) prior to parole hearings.

Various tests are used in the different institutions. Among the group intelligence tests used are The Revised Beta Examination, The Army General Classification Test, The Academic Promise Test, The California Test of Mental Maturity, and The Lorge Thorndike Intelligence Tests. A study by Brown and Courtless (1971) found that most of the institutions in their survey used the Wechsler Intelligence Scale for Children (WISC) which applies to adolescents and the Wechsler Adult Intelligence Scale (WAIS), both of which are individualized tests. Among the personality tests used are the Thematic Apperception Test (TAT), the CAT, the Rorschach, and the most popular is the Minnesota Multiphasic Personality Inventory (MMPI). Among the aptitude tests used are the Minnesota Clerical Test and the Differential Aptitude Test.

As noted above, inmates and juveniles are tested either in groups or individually, or both. The testing situation is far from optimal especially since the incarcerated person is undergoing very upsetting experiences. He/she may be awaiting sentencing or may have just been sentenced perhaps for the first time. Anxiety is also caused by separation from family, and feelings of disorientation, confusion, and fear. The individual may also be pressured by other inmates or juveniles. Also, he/she does not have an understanding of the magnitude of the impact the test results may have on his/her institutional experience and may respond to the tests haphazardly. Most of these individuals are inexperienced in test taking. Many Hispanic inmates and juveniles who are Limited English Speaking or Non-English Speaking are administered the same test batteries that are administered to the native English speakers and most of the time no provisions are made for translating assistance. Questions then arise as to the test results as valid personality profiles and valid assessments of intelligence and achievement. It may very well be that test results are nothing more than scattered pictures of situational symptomatology, i.e., normal emotional reactions to institutional experiences.

In many instances, clinical interviews are also held in English with Spanish-Speaking inmates and juveniles. Initial clinical interviews are not considered a form of psychological testing by the profession of psychology. However, for the purposes of this paper the clinical interview may be considered as a simulation of a testing situation in that assessment, diagnosis, and treatment plans occur during or result from the interview. The clinician's impressions and decisions are strongly colored by his/her socio-cultural background and politico-economic experience. The clinicians' methods, theoretical base, and diagnostic practices are usually based on standards which are supported by the profession and which are insensitive to Hispanic experience, affective and cognitive styles, and cultural differences. For example, the prevalent idea among clinicians about mental illness among Hispanics is that psychopathology is inherent in the culture and if the "hispanismo" can be eliminated then the individual will be "cured" (Martinez, 1973). Another prevalent idea among mental health professionals is that violent persons are insane and that the purpose of the clinical interview is not to assess whether the person is sane or not, but to determine the kind and degree of insanity.[1]

As a result of these and other philosophies, many clinicians have limited perceptions of incarcerated Hispanics, exaggerate the perceived problems, misdiagnose, and fail to recognize any positive personality traits, or redeeming characteristics of the individual. Clinical interviews, therefore, may also lead to invalid assessments and to poor programming for incarcerated Hispanics.

INTERPRETING TEST SCORES:

One of the first items of institutional paraphernalia that each inmate and ward (juvenile) receives, is a set of scores such as an I.Q. score of the WAIS or WISC and a psychological profile from a test such as the MMPI. But what do these test scores mean for incarcerated Hispanics? How can they be interpreted? There are no norms by which to determine the meaning of the scores. If the score is higher or lower than the average what does it mean? Do the scores relate to any situation or any behavior or performance in the real world? If the examiner's interpretation follows the standardized norm, it is invalid for Hispanics. If the examiner is more sensitive to ethnic differences, the interpretation is then based on subjective beliefs and trial-and-error at best, rather than standardized norms that have proven to have criterion validity, i.e., a relationship to real life situations.

Eventhough the I.Q. score may be a very poor indicator of the individual's ability, the I.Q. score follows the individual throughout his/her jail "career" and into the community. These I.Q. scores and personality scores are placed in files that are available to any jailhouse personnel that has access to files. This accessibility of personal psychological records is very questionable, is unethical, and may be unconstitutional, because untrained unprofessional personnel have access to very personal material which can be used in detrimental ways. Strict ethical codes for professional psychologists cover the confidentiality of test protocols, and these ethics should be enforced in the correctional settings. The practices of labeling a person with a certain I.Q. score and placing this label in a public file may prove detrimental to the individual's vocational or educational achievement. Also, at the very least, the inmate or ward should have access to his/her psychological file if so desired.

Personality scores may also prove to be very detrimental to Hispanics. According to McCreary and Padilla (1977) a greater proportion of Mexican-American inmates score in the psychotic ranges of the MMPI than do Black or white inmates. And according to Holland and Holt (1975) inmates who in their sample received MMPI scores suggestive of severe personality disturbance "received a greater number of recommendations for state correctional institutions than expected", while the remaining inmates in the sample received "a substantially greater frequency of county-level recommendations than expected" or "received intermediate recommendations." Severe personality disturbance in this study referred to schizophrenic or borderline schizophrenic symptomatology along with paranoid features, "pronounced tension, irritability, hostility, personality rigidity, and social alienation". Since the MMPI was originally designed for psychiatric patients, one must wonder to what degree the test is actually measuring the traumatic experience of being incarcerated.

The following section of the paper will further elucidate the design and negative effects of psychological tests with emphasis on intelligence tests, but the general principles discussed can be applied to all psychological tests.

The persons who designed the first intelligence tests during the early part of this century did so with the purpose of designing a categorical system for children's capacity to learn so that children could be placed in classrooms that would meet their particular needs. The students with higher scores would then be expected to function at a fast rate and would be given a great deal of intellectual stimulation, whereas the students with lower scores would be expected to learn at slower rates and the lower the scores, the lower would be the expected rates of learning. The students with lower scores would also be given easier work. This practice of the categorization of students' learning capacity continues to this day.

This practice is deterimental to Hispanic students in all schools because the intelligence test used is culturally biased, is an inaccurate measure of Hispanic students' abilities, and systematically results in I.Q. scores that are lower than the students' innate ability. This inaccuracy is built into the intelligence test because it is standardized on a white, middle class population. As a result, Hispanics are expected to achieve at low levels and are treated accordingly.

The following is a simplified illustration of a standardization process. A test constructor gives X number of questions to a large sample of people who represent the kind of people that will take the final version of the test. For example, 1,000 questions are given to 10,000 children across the United States. Those questions that are always answered correctly and those questions which are never answered correctly are eliminated entirely.

The remaining questions are then ranked in order of the number answered correctly, that is, they are ranked in order of the questions answered correctly the most often to the questions answered correctly the least often. Those questions answered the most are considered easy and those answered the least are considered hard. The questions are then administered several times to similar samples to continue testing out the ranking order. After much statistical analysis, the test instrument is completed with a standardized scoring method, which can validly apply only to persons who were represented in the standardization sample. Since Hispanics were never represented in the standardization process for the Wechsler Intelligence Scale for Children (WISC) or the Wechsler Adult Intelligence Scale (WAIS) which are the most widely used intelligence scales, the WISC and the WAIS are invalidly used when used with Hispanics.

Hispanics systematically attain scores on the WISC and WAIS which are a gross misrepresentation of their innate ability. For example, a disproportionate number of Chicano children in public schools are labeled mentally retarded because of their low scores on the WISC (Mercer, 1973, 1975). The WISC and WAIS consist of words and culturally relevant concepts which are common for white, middle class individuals. In essence, what the WISC and WAIS test are the individual's level of achieved knowledge of white, middle class values, and are therefore, in actuality achievement tests regarding cultural conformity and consensual cultural knowledge. Hispanics who have different social, environmental, cultural, and language experiences than do white, middle class persons, should be tested with an intelligence test which contains words and concepts which are relevant to them, and the test must be standardized using a sample of Hispanics. The use of the WISC and WAIS is so detrimental to Hispanics that it should be outlawed as an assessment tool for Hispanics. I cannot emphasize enough how much the Hispanic educational experience has been fashioned by the I.Q. Score.

In correctional and juvenile facilities, many inmates and wards receive WISC scores that are misrepresentative because they are below average to average when they should be above average to superior in many cases. The academic and counseling personnel then have low expectations of the inmates and wards because of their "low abilities" as recorded in the I.Q. Scores and subsequently treat them accordingly and also create an atmosphere which is not conducive to progress beyond their low expectations of the inmates abilities. A popular movement which is occurring in corrections today is the identification and removal of retarded inmates from the general population to units where they can receive special treatment (Santamour & West, 1977). If an inmate in such a program is not retarded initially he/she may very well function at a retarded level in the end.

In a number of experiments documented in the psychological literature, it was found that children progressed academically according to the teachers' expectations. In these experiments when bright children were labeled average and the teachers were told these children were average, the teachers then treated them accordingly and the achievement levels of these children dropped considerably to statistically significant lower levels. This same kind of phenomenon is occurring in correctional and juvenile facilities.

Persons who lost faith in the entire social system and who act out their desperation with criminal behavior are then further stigmatized by inadequate testing methods. Instead of rating their potential and motivating them to use it, the present system results in categorizing them at levels that are intellectually inferior to the general population. In general, the institution then perceives them as much less adequate than they are and fails to find methods to motivate them because they don't have much learning capacity anyway, as claimed by the almighty I.Q. Scores. And because they are "average" and "below average" intellectually, they are expected to learn easy material very slowly.

How then can we expect these failure oriented persons to learn about success, maintain themselves in the job market, and have an investment in their lives? Our efforts have not proven to be successful in introducing them to the second most basic institution of our society, the educational system. How then can we expect these socially disenfranchised individuals to take a responsible place in a society in which the educational system is the first means of access to anything considered valuable in society?

CULTURAL ISSUES:

As in all studies that deal with Hispanic issues, the issues of cultural and language differences play an important role in the practice of psychological testing. Obviously tests designed in English are discriminatory against the Spanish-speaking. What may not be so obvious is that the mere translation of psychological tests does not render them valid for Hispanic populations because they are still not standarized. Also the literature demonstrates that the ethnicity of the examiner effects the test results. And being that there are few Hispanic employees throughout the correctional and juvenile systems, it is logical to assume that few if any test batteries are administered by Hispanic personnel.

Many studies regarding cultural differences of Hispanics refer to culture as social indicators, such as socio-economic status, dropout, unemployment, and incarceration rates, number of children and the like. Culture in this report refers to the group's experience as it has evolved over centuries. Culture refers to something deeper which encompasses one's way of being in the world and one's relationship with the physical and social world. Culture includes such phenomena as time orientation; the types of stimuli that elicit appropriate emotional and behavioral responses; the purpose and meaning of interpersonal interaction, work, and play; the philosophical basis for the culture, e.g., indigenous pre-Columbian philosophy; and values concerning every aspect of social and economic life. The psychological test represents one cultural mode which is then imposed upon persons of another cultural mode, and the psychological profile that results is distorted at best.

One of the clearest theories regarding those psychological factors that constitute cultural differences for Hispanics is the theory of Ramirez and Castaneda (1974) who conceptualize cultural differences for Hispanics as being a matter of cognitive styles with the "field sensitive" cognitive style emphasizing feelings, collectivism, and personal relationships and the "field independent" cognitive style emphasizing analytical thought, individualism and competition. The theory of Ramirez and Castaneda encompasses four broad areas of behavior related to learning and motivational styles and human-relational and communication styles. Ramirez and Castaneda indicate that Mexican-American children are generally field sensitive and demonstrate different behaviors and preferences than do field independent children who are generally Black and white. For example, field sensitive children prefer working together to achieve a common goal, seek rewards which strengthen relationships with authority figures, and prefer a curriculum that requires working on concepts from the whole to the specific, whereas field independent children prefer working alone, seek nonsocial rewards, and prefer a curriculum which stresses working from specific concepts to the whole. The work of Ramirez and Castaneda clearly demonstrates that cultural differences result in differences in psychological factors such as attitudes, values, and perceptual modes. Differences in cognitive style may very well be one psycho-cultural factor that also accounts for poor scores in the psychological testing of incarcerated Hispanics.

Research which is not sensitive to the actual cultural differences of Hispanics often proves to be detrimental to the image of this ethnical group. And any research that may emerge in the future around the issue of psychological testing of incarcerated Hispanics must be sensitive to the historical plight of the Hispanic as an oppressed minority or the resulting information will have the same effects on other traditional studies, that is, the stereotypes will be supported. The process of traditional research exhibits the following patterns:

a) social problem regarding Hispanics:

b) initiation of research by agency or institution is the area;

c) collection of the data and statistical analysis;

d) the interpretation of the statistics that indicate that the Hispanic is low in every aspect of socio-economic life;

e) the implication from the data and the interpetation that the Hispanic is inferior;

f) the attempt to change the inferiority of the individual;

g) continued social and educational problems due to the groups' innate inferiority.

It is just this type of research which could easily develop around the issues of psychological testing of incarcerated Hispanics. For example, it would be relatively easy to demonstrate that low test scores correlate positively with poor performance in some area, e.g., academic achievement. Such studies would fail to question the validity of the tests and the institutional practices that reinforce failure. Awareness of the potential pitfalls of research are important to avoid the use of such research in policy development and implementation.

In conclusion, the commonly used psychological tests based on theoretical models, primarily the medical model, that emphasize the personality or intellectual deficiencies of individuals are minimally helpful in determining the socio-psychological needs and capabilities incarcerated Hispanics. Rather, tests are needed that are based on theories that encompass a model of the healthy, functioning person. Present tests ask what is the subject's deficiency and how can he/she be categorized. Tests are needed that ask how is this person functioning and how can he/she be motivated to function better.

FOOTNOTE

1. Lecture in Forensic Psychology by Jay Ziskin, J.D., Ph.D., California School of Professional Psychology, Spring, 1977. This topic was presented by Dr. Ziskin and may not necessarily be his personal view.

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CONCLUSIONS

The following are conclusions as derived from the discussion of the psychological testing of incarcerated Hispanics:

A. Testing Conditions

1. Translating assistance is not available during testing.
2. Inmates and wards are uninformed about the implications of the tests.
3. Inmates and wards are not experienced in pencil-paper tests.
4. Testing leads to poor programming for Hispanics.
5. Many psychologists are insensitive to Hispanic experience, affective and cognitive styles, and cultural differences.

B. Test Results

1. Psychological tests are invalid for Hispanics because they are culturally biased and are standardized on a white middle class population.
2. A disproportionate number of Hispanics score in the psychotic ranges of personality tests.
3. Intelligence tests render gross misrepresentations of the innate ability of Hispanics.
4. Intelligence tests are achievement tests regarding cultural conformity and consensual cultural knowledge.
5. The mere translations of psychological tests does not render them valid for Hispanic populations because they are not standardized.
6. The ethnicity of the examiner has a marked effect on the test results.
7. The excessive availability of psychological records to jailhouse personnel is unethical and unjust.
8. The ethical code for professional psychologists is not enforced regarding the confidentiality of test results.

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9. Inmates and wards are not given test results, diagnoses, or rationale for treatment.

10. Inmates and wards do not have access to their psychological files.

C. Needs

1. There is a need to protect the rights of inmates who are removed from the general population due to a diagnosis of mental retardation and who are placed in special treatment units.

2. There is a need for innovative research that does not support stereotypes and that documents the invalidity of psychological testing for Hispanics and incarcerated Hispanics.

3. There is a need for the development of relevant personality and intelligence tests for Hispanics.

4. There is a need for legislation and policy development regarding the psychological testing of Hispanics in general and the psychological testing of incarcerated Hispanics in particular.

RECOMMENDATIONS

A. Testing Conditions

1. The Dept. of Corrections should develop policy in the following areas:

    a) Inmates and wards should be informed about the nature, uses, and implications of the tests they are administered.

    b) Spanish-speaking examiners or translators should be available during testing procedures.

    c) Alternative methods for determining program needs for Hispanics should be developed.

    d) Psychologists working in the correctional field should be given training regarding Hispanic affective and cognitive styles, cultural differences, needs, and the like.

2. The Dept. of Education should develop policy regarding the education of psychology graduate students around the issues of Hispanics especially in those states with large Hispanic populations.

B. Test Results

1. The National Institute of Mental Health should develop valid psychological tests for Hispanics.

2. The Dept. of Justice should validate psychological tests for incarcerated Hispanics.

3. The National Institute of Mental Health and the Dept. of Justice should provide funds to produce hard data regarding the effectiveness of current psychological testing for Hispanics and incarcerated Hispanics.

4. The National Institute of Mental Health and the Dept. of Education and the Dept. of Corrections should formally recognize the current psychological testing is invalid for Hispanics.

5. The National Institute of Mental Health and the Dept. of Education should recognize that the mere translation of psychological tests does not render them valid for Hispanic populations because they are not standardized.

6. The National Institute of Mental Health and the Dept. of Justice should locate funds for scholarships to support bilingual Hispanic graduate students who should be persons who have demonstrated rapport with offenders and who are community oriented.

7. The Dept. of Corrections should follow its own guidelines for the number of psychologists it needs and should fill these positions with bilingual Hispanic psychologists.

8. The Dept. of Corrections should uphold professional standards and enforce the code of ethics for psychologists regarding the confidentiality of test results.

9. The Dept. of Corrections should make test results, diagnoses, and rationale for treatment available to inmates and wards and this should be done through the individual psychologist serving the inmates and wards. In the case of juveniles, this information should be made available to the youth's family or family representative.

10. The Dept. of Corrections should make psychological files accessible to inmates and wards during the entire incarceration period.

C. Needs

1. The Dept. of Corrections should not remove inmates with a diagnosis of mental retardation from the general population without the consent of the inmate and the consent of the inmates' family even in the case of adults. In those cases where the family cannot be contacted or involved the courts should appoint a person to act in their behalf.

2. Congress should pass laws regarding the psychological testing of Hispanics in general and the psychological testing of incarcerated Hispanics in particular.

3. Each state should pass laws regarding the psychological testing of Hispanics in general and the psychological testing of incarcerated Hispanics in particular.

4. The National Hispanic Conference on Law Enforcement and Criminal Justice should organize a national multi-disciplinary task force among the tasks of which would be the following:

    a) Locate funding to maintain itself.

    b) Study existing laws that may relate to the rights of inmates as they relate to the problems of psychological testing.

c) Keep abreast of the legal test cases regarding psychological testing as they are being litigated.

d) Maintain communication with the various departments and agencies regarding the recommendations of the Conference.

e) Introduce legislation or legal test cases as the hard data is produced.

f) Impact the departments and agencies regarding policy development as hard data (see below) and laws are developed.

g) Form coalitions with other ethnic minorities wherever feasible and expedient.

h) Recruit the interest, expertise, and lobbying powers of other organizations and persons.

i) Identify and recruit Hispanic psychologists and develop the psychology task force among the tasks of which would be the following:

    i) Identify and recruit Hispanic psychologist to carry out the various functions of the psychology task force.

    ii) Develop a literature review regarding psychological testing of Hispanics, including incarcerated Hispanics.

    iii) Produce and publish hard data regarding the psychological testing of Hispanics, including incarcerated Hispanics.

    iv) Development new assessment methods including testing and alternative methods for assessing intellectual and emotional functioning.

    v) Maintain communication with the National Task Force.

5. The National Institute of Mental Health and the Dept. of Justice should fund the national multi-disciplinary task force described above.

BILINGUAL PROGRAMMING:
A VIABLE ALTERNATIVE IN CORRECTIONS -- PART A

By:

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Dr. Joan Moore, Professor of Sociology, University of Wisconsin, Research Associate, Chicano Pinto Research Project, Los Angeles, California, and author of HOMEBOYS, a study of Chicano young gangs, drugs and prison, recently stated:

> The only hope for Chicano Pintos (those men and women who have served time in adult or youth authority facilities) for an education which can help them escape the criminal-poverty syndrome, is when they are confined in prison.

-0-

At a conference of inmate pre-release directors convened by the Department of Correctional Services in Albany, New York, in May, 1980, inmate program leaders warned:

> Bilingual programming is an essential requirement for non-English speaking inmates, so they can be prepared for release. That programming has to start the first day they begin serving a state sentence. And by bilingual programming we don't only mean educational programs, but also drug and alcoholic counseling, help with religious and family problems, peer counseling by other inmates and psychiatric counseling in Spanish.

-0-

The case for Bilingual Prisons, in states now housing large numbers of Hispanic or non-English speaking inmates is picking up momentum. Despite recent diatribes by misinformed politicians and misguided educators, against bilingual instruction in public schools, the problem of dealing with Hispanics in correctional settings has reached a point where prison administrators must respond to needs which are particular to this growing inmate constituency.

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The Hispanic inmate today represents a relatively new inmate category in the population, especially in states or municipalities which have only recently experienced significant migrations of Hispanics from other states or from abroad. A number of these inmates are recent migrants to this country (legal or illegal) who find some prison programs closed to them to a degree much more pronounced than English speaking Chicano or Neorican (from New York City) inmates.

The case for the Bilingual Prison parallels the Case for the Bilingual City. New York City, for instance, is now the fifth largest Spanish speaking metropolis in the world. Everywhere efforts are being made to make life easier for spanish-ancestry citizens by the implementation of a sophisticated bilingual communications system which daily reaches into more and more aspects of cosmopolitan living. This sophistication extends to brokerage houses, banks, department stores, mass transit systems, public and private schools, entertainment, etc. Miami, with its huge Cuban influx since the Castro takeover, has become the largest Spanish speaking city in the South. Some contend that if it had not been for the Cubans, Miami may today have slipped into a second class city because it was in bad need of an economic blood infusion after tourism had peaked in the late fifties.

PRISON COMMUNITY

Since the correctional facility is, itself, a "small city" the same needs which must be met in the metropolis must also be provided in the cellblock. A great urgency exists to expand and diversify the range and quality of services offered inmates who cannot comprehend English -- be they Spanish speaking Hispanics, or French speaking Haitians. These services go beyond education and counseling and affect such daily prerequisites as religious services, medical and psychiatric care, recordkeeping, disciplinary hearings, family visits, commissary purchases, recreation, and a host of other essential housekeeping services.

Servicing this growing population is not only a state prison or Federal prison system problem -- it is one being faced by smaller correctional and detention systems throughout the entire American correctional spectrum. The emerging problems in the cellblock reflect similar pressures already being made on the other agencies which comprise the criminal justice system -- problems aggravated because of the shortage of bilingual personnel and intelligible paperwork which can assist the defendant (or victim) enmeshed in the complicated judicial system.

But prison managers have additional burdens -- usually their facilities are located in remote rural areas where it is almost impossible to recruit professional or paraprofessional Hispanics willing to work in their facilities. Being the last link in the criminal justice chain, the range of services they must render are far more diverse than the other agencies -- they must house, clothe, educate, counsel, medicate and feed these wards of the state.

POPULATION INCREASES

A recent survey of 233 correctional facilities in the U.S. and Puerto Rico revealed that 19.5% of the total male inmate population is

Hispanic with Puerto Ricans accounting for 15.8 percent of the total (Lawrence et al.). According to the survey the largest concentration of Hispanics are found, predictably, in Puerto Rico (100 percent, California (20.5 percent, and the Eastern states (5.9 percent).

The number of prisoners detained by Federal and state authorities in 1979, serving sentences on felony charges, reached a record high for the fifth consecutive year -- a boost of 2.3 percent over 1978 for a total of 314,083. Of that number, approximately 11.6 percent are believed to be Hispanic -- a total of 35,175. This is a figure larger than the total number of all inmates in any one state (or the Federal Bureau of Prisons) and, in a sense, constitutes "a system within a system."

This figure, too, does not include the huge number of Hispanic inmates who may be confined in county workhouses, municipal jails or precincts who may be awaiting short sentences or already serving them in county penitentiary systems. (In New York City there are presently about 7,100 inmates of which about 2,000 are Hispanic. In other major county jails, such as Westchester, Erie, Monroe, Suffolk and Nassau, sizable numbers of Hispanics are also incarcerated.)

REVOLVING DOOR

These figures, too, do not include the large number of Hispanics who may enter in and leave correctional facilities at any one time in the year. For instance, in New York City, about 260,000 people are arrested yearly. Of that number approximately 65,000 are detained after arraignment in the Criminal Court. Of this number approximately 28.5 percent are Hispanics or approximately 18,525 men and women. Some comparable figures can be compiled for the detention facilities in our major bilingual cities such as Miami, San Antonio, Los Angeles, Chicago, Dallas, Houston and Philadelphia.

Equally disturbing to penologists and criminologists is the fact that whereas the rate of growth in the national prison population slowed down in 1979, the percentage increase for Hispanic inmates over previous years continued to be high. In New York the number of Hispanics sent to state prisons has increased at twice the percentage figure for all inmates in the past five years. New York now has 4,070 Puerto Rican inmates.[1] That figure does not include the large number of South and Central Americans or Hispanics who may not have Hispanic surnames and are lost in the computer readouts as "white" or "black" inmates.

Logically, states with the largest number of Hispanic inmates (either in state prisons or local jails) are also the states with the largest Hispanic populations -- Texas, California, Florida and New York. The Bureau of Prisons, because of the enormous number of alien detainees and Hispanics serving long sentences on serious drug charges, has an unusually large number of Hispanic inmates distributed throughout its vast national system. Though prisoners under Federal jurisdiction in 1979 decreased to a figure of 26,233, almost 12% from 1978, the percentage drop in Hispanics housed in Federal facilities was not as dramatic.[2]

STATISTICAL PROBLEMS

An agonizing problem continues to be the accurate compilation of the actual number of Hispanics being processed through the criminal justice system and expected to serve terms in sentenced facilities. A more accurate rendering of these statistics, not only in term of numbers, but in educational, medical and other determinants, is important to programmers who must budget for programs which will prove beneficial to non-English speaking inmates, their families and the community to which they will eventually return. Despite recent attempts by correctional systems (through computerized recordkeeping, OBSCIS, etc.) to improve classification and identification procedures, much progress still remains. Correctional experts will continue to seek a workable formula for some time to come which will help them identify these individuals from the time they are arrested to the day they walk out the front gate of a state prison. This identification and tracking process is all the more important in our major urban areas where recent migrations of large numbers of Hispanic ancestry peoples has impacted severely on municipalities and their social service agencies' ability to provide adequate bilingual services to non-English speaking Hispanic aliens or naturalized citizens.

In New York City, as in Los Angeles or Houston, traditionally the first stop for many migrants from our sister republics to the South, the Hispanic population has grown considerably in the past two decades. There are now over 2.3 million Hispanics in the greater New York City metropolitan area and a correspondingly similar number in the San Diego-to-Los Angeles megalopolis area. This population, too, contains an unusually large number of Hispanics under 21 years of age.

These are teenagers who constitute an unusually large percentage of the adolescent probation and detention caseload in those areas. The increase among Hispanic adolescent offenders has been particularly disturbing to law enforcement officials and exceeds the proportional increase in the city's overall Hispanic population. These are youths who, after a number of run-ins with the law, eventually land in the adult authorities serving long sentences on serious felonies.

BILINGUAL PRISON?

Naturally this influx of Hispanics -- adolescents and adults -- has severely strained the resources of correctional systems. Even in larger systems with more funds and, perhaps, a more favorably disposed legislature, it has been difficult to obtain enough dollars to recruit, train and retain bilingual non-Hispanic personnel or Hispanic professionals willing to work in large prisons in custodial, program or administrative roles.

In more conservation states (or counties) prison administrators have been reluctant to add "foreigners" to their staff who may "talk a language only they and the inmates will understand." Some conservatives see these new employees as empathizing too much with inmates, and perhaps not being as responsive to the system "or the rest of the staff." Luckily these misconceptions and prejudices are beginning to fade out as more modern management techniques and personnel policies are being pursued by correctional administrators fearful of Federal condemnation for failure to pursue acceptable affirmative action policies. Nonetheless, in remote maximum security prisons (even in the so-called liberal states) local hostilities still exist which make it difficult for Hispanic professionals to relocate or find congenial working conditions.

The language factor is not the only issue under study in evaluating the case for the Bilingual Prison. The majority of Hispanics arrested today are young, usually speak adequate English, and have a comfortable acquaintaince with the "establishment." Many of these offenders, from early years, have acquired an ingrained hostility towards the criminal justice system and are street-wise in the ways of criminal behavior. A significant proportion are from broken homes or from single parent families or from families where both parents must work and are unable to provide adequate parental supervision. A disturbing number are "state raised children" who have graduated from the petty annoyances of foster homes, to reformatories and on to "the Big House."

Raised in an English speaking setting, these young men and women are language handicapped in that their ability to write and speak English well is far below acceptable standards. Those that do speak spanish usually speak a slangy version commonly referred to as "spanglish," a bastard mixture of Spanish and English. Their ability to read and write Spanish is far worse than their English.

Another obstacle, less visible to those who have not had sufficient exchange with Hispanics, is the inability of some Hispanics "to understand what is happening to them." This is a common denominator among Hispanics who may be recent migrants who are often very confused with the U.S. criminal justice system as well as the american way of doing things. Many of these inmates may not know about social security, how to open a bank account or how to do many of the simple things average citizens take for granted. Basic adult education and survival skill training is mandated when compiling the list of programs through which these individuals will be processed during their period of confinement. The majority of these individuals are from South America, Mexico or the Dominican Republic. Most were arrested on a variety of charges related to drug smuggling and distribution. It also includes a small number of women, often domestics or farm girls who have been recruited as couriers between major drug distributors.

INMATE PROFILES

There are five basic types of Hispanic inmates, they are easily identifiable but may require a slightly different programmatic approach. they are:

1. The recent migrant or illegal alien, who is usually detained on Federal warrants on drug charges. This group could also include a small number of well educated (and well heeled) persons caught in narcotics trafficking. There is also a smaller group who may be itinerant pushers or couriers who, while overstaying their welcome in this country as tourists or students, have engaged in criminal activity.

2. The jibaro or peon personality, who is usually from a rural South American background, and is arrested for crimes of passion, intemperance, public nuisance, or he just may have been an unfortunate who ran into insensitive police officials who "socked" it to him on a charge which would have been erased off the books had it been someone else. (The term jibaro is used not to deprecate these individuals but rather to identify a simplistic peasant mentality which occassionally leads some innocents into trouble in an alien society.) Sometimes the jibaro is an older person, with little language agility who may have conceivably lived in this country for many years, but because he stays close to his own barrio and acquaintances, has not bothered to learn this nation's tongue or idiosyncratic customs.

3. The young, first or second generation Hispanic youth, who is usually arrested for violent crimes, drugs, property theft, etc., and has had a recognizable criminal track record.

4. The older (adult) Hispanic, who is quite expert at getting around the law, who speaks acceptable English and may earn his keep as a small king pin in a larger drug ring, small rackets, loan sharking, protection, fencing and burglary.

5. The mentally disturbed or retarded Hispanic who is arrested for violent crimes, fraticide, rape, child molestation, public exposure, etc., and who actually belongs in a mental institution and requires extensive psychiatric care. Distressingly, this individual may have been recycled through the criminal justice system several times without receiving proper psychiatric diagnosis or treatment because of the language barrier. In a maximum security facility, serving a long sentence, this type of inmate becomes a serious threat to the security and safety of both staff and inmates and himself may be subjected to several disciplinary measures if his mental condition is never accurately diagnosed and treated. (Prison officials often tend to categorize Hispanic mental cases as "fakers" or "manipulators" trying to "get away with something." Since few systems have spanish language psychiatrists or mental health aides or psychologists or clinical psychologists the nature of this problem is far more severe than readily apparent on the surface.)

PROGRAMMING OBJECTIVES

Such a mixture of poor-english speaking Hispanic inmates poses problems for correctional administrators and programmers, of which language is only a small part of the overall scenario. Aside from the language issues a more intimate and less obvious requirement is that of providing an "Hispanic" presence in the facility, that is, a climate created either by people or resources which is sufficiently congenial to establish a better rapport between these inmates and the rest of the staff.

Education is a prime concern. The need exists in many large and medium sized facilities for a range of courses tailored for Hispanic or non-English speaking inmates. These include: (1) English-as-a-second-language; (2) Basic Adult Education; (3) High School Equivalency (in English and/or Spanish): (4) Vocational classes in Spanish; (5) College level (first or second year) courses in Spanish; (6) Correspondence courses in Spanish; and (7) Spanish-as-a-second-language for Hispanics who may not speak or write their own language well.

With rare exceptions most large correctional systems have yet to devise a package of courses such as those listed above due to the few Hispanic or spanish speaking teachers and/or educational counselors on their staffs. Bilingual classes are still considered a luxury in many systems and in those systems or facilities where some spanish classes have been instituted they have been among the first to be dropped during budgetary pullbacks. The larger systems will go along with this program "as long as someone else pays for it -- the Federal government or the state's educational department."

INMATE MILITANCY

Hispanic inmate groups, particularly in Eastern states, are becoming quite vocal in their request for adequate programming and staffing patterns. They complain that too often they are just thrown haphazardly into programs with other inmates, given inadequate counseling and orientation and, instead, assigned to the most unattractive and lowest paying positions in the prison work crews. Generally, prison officials categorize Hispanics as those "with a language problem which may be easily satisfied with an elementary course of English-as-a-second-language.

Most systems have been reluctant to utilize Hispanic inmates who may be competent enough to serve as teachers, counselors or in a variety of jobs where they could provide essential services to other Hispanics. Even in the schools, teachers have been hesitant to use Hispanic teaching aides to help supplement their course activity and unburden them from time consuming chores.

The second most common course which may be offered are those which have a historical or cultural base and are similar in structure to Black Studies groups. This pattern of selection parallels that of many community colleges and universities in large Hispanic populated areas who consider that a cultural awareness program is sufficient to meet the accreditation requirements for courses to be given Hispanic students.

Private and public agencies requesting funds for Hispanic programs use the large number of Spanish surnamed prisoners as their rationale for establishing such programs. However, these agencies fail to consider issues which go beyond language proficiency and cultural determinants. They fail to realize many Hispanics do speak English and that a significant number may not be particularly interested in a cultural or historical program to increase "their ethnic awareness." Inmate groups continue to advocate that even though cultural programs have their place, they are more concerned with training programs which may give them a vocational skill with which to earn a living when released. This is especially true with inmates serving shorter terms who may not be around long enough to earn a college degree in the liberal arts.

As mentioned previously, there are illiterates in the population as well as more educated individuals. There are Hispanic inmates who may have been arrested on the streets after they already had a high school diploma and may have even attended a community college or acquired a marketable skill. Therefore, it is a prime concern of prison classification personnel to correctly identify these divergent subgroups and offer them the types of tailored programs best suited to each individual's basic needs -- this concern is universal, whether the inmate is a Black, Brown, or White resident.

NON-PROGRAMMING SERVICES

Bilingualism and the need to provide positive communications linkage in prisons goes beyond counseling and educational programs. In a recent letter to Commissioner Thomas A. Coughlin (of the NYS Department of Correctional Services) an inmate wrote, on behalf of the Hispanic inmate organization:

> Our organization is charged with seeking avenues which will benefit our particular populace. It's also our duty to be aware of problems which confront the Hispanic population and to seek progressive, and realistic solutions which work within the criterion of this facility's administration and the Hispanic population.
>
> The shortcoming of not having a bilingual person in the Temporary Release Committee (which decides whether an inmate may be able to leave prison temporarily on a furlough) displays a lack of concern for the Hispanic population. Such discrimination

> tends to result in unequal treatment for the intended beneficiaries of this committee or activity causing a great deal of frustration and tension among the Hispanic population.
>
> Therefore, the Hispanic population feels that the most important part of a bilingual person help is not his presence or availability sitting on this committee, but the opportunity to consult with an Hispanic bilingual person in his own language or at least a person with whom he can communicate with good common sense and experience who can, in a straight-forward and competent manner set forth the inmate's claim in understandable fashion.
>
> The Hispanic population is further faced with discrimination when called to be interviewed by the TRC. Insult is added to injury in that the TRC contains no bilingual person with whom the Hispanic inmate can communicate to express his reason and desire as to why he should be permitted to go on temporary leave. The inmate is also unable to comprehend or answer the question put to him and, as a result, he may be denied eligibility.
>
> The disappointed inmate turns to his correctional counselor, who, not speaking English, refers him to the Hispanic inmate group. The inmate organization has even volunteered to translate the forms used by the TRC into spanish so inmates may know what they are putting down on the applications before they are forwarded.

In other words, the problem, simply stated, is that there are no Hispanic or Spanish speaking persons on the TRC at the Fishkill Correctional Facility (Beacon, New York) with whom an Hispanic inmate can communicate. The paperwork and forms are not in Spanish. Errors crop up. This problem is not unique to Fishkill. Other facilities lack Hispanic or Spanish-speaking personnel in key assignments and committees who could be so instrumental in governing the quality of the daily lives of inmates; inmate grievances, adjustment committee, superintendents' proceedings, work and classification committees, etc.

In June, inmates at the Clinton Correctional Facility, complained to this writer, that rules and regulations in the psychiatric unit were not printed or posted in Spanish. This caused severe communication gaps between inmates and staff, especially sick patients who may be under heavy sedation. These misunderstandings usually result in disciplinary actions against the inmates who may have committed no infractions.

Clinton (at Dannemora) presently houses over 400 Hispanic inmates. The institution has only one (non-Hispanic) spanish teacher; one Hispanic counselor and five Hispanic correctional officers -- out of a staff complement of almost 1200 employees. This lack of non-custodial Hispanics is especially felt in the medical and psychiatric units where doctors and nurses must contend with a large number of sick and disturbed Hispanic patients. To offset this the institution employs some Hispanic peer counselors. However, the interference of the peer counselor is unwelcome in confrontations between officers and inmates.

The lack of prominently displayed bilingual rules and regulations is especially troublesome in visiting rooms where periodic misunderstandings occur between inmates, their family visitors, and security personnel assigned to these areas. Too often a mother or father or other relative makes a long trip to a remote prison only to find that they cannot visit the inmate because of some oversight which occurred in filling out forms -- either on the part of the visitor, the inmate, or the administration. Unfortunately, staff members prefer to say "no", rather than extend themselves sufficiently to rectify a situation which is not critical to the proper functioning of institutional security and administrative practices. These situations (often looked upon by Hispanic prisoners as a sign of disrespect for their loved ones by the staff members) leaves deeply etched scars which later can contribute to tensions in the cellblocks or prison yards. Lamentably, these are situations brought about because of language difficulties and the failure of the institution to make available easily understandable instructions.

RELIGIOUS SERVICES

Of importance, too, is the requirement for Spanish speaking priests and ministers to tend to the religious needs of Hispanic inmates. In New York State several prison chaplains (both full and part time) are Hispanic or speak fluent Spanish. The New York Bible Society pioneered in bringing volunteer and paid clergy to tend to the religious and family needs of Hispanic inmates. Unfortunately, too many states have left the naming of prison chaplains to political clubs, which makes it difficult for some denominations, especially the Pentacostal churches, to get their ministers into the prisons.

In New York State a family visiting program was implemented three years ago which permits families to remain overnight (in a trailer) with an inmate. This program is strictly monitored by the religious staff and has been exceptionally successful. The chaplains visit the families and verify the legality of the marriage before approving visits. Spanish speaking chaplains assist in this important program.

These Hispanic clergy are also assigned to the Department's Community Chaplain program, where they perform social service counseling, and do the leg work for institutional chaplains and counselors who are trying to resolve family problems. Their language proficiency is essential in resolving issues which can severely impact on an inmate's program while he is confined or on his chances for early release, either on parole or under a variety of alternative-to incarceration programs, such as work-study release programs.

CONCLUSION

There is ample evidence that the Bilingual Prison may be a fixture in the American Correctional Scenario in the future, especially in areas where a substantial number of Hispanic inmates have been remanded to correctional authorities for prolonged confinement. But the Bilingual Prison is like any other major breakthrough in modern corrections or penal reform, that is, it must reflect the changing needs of the inmate population, society's insistence for a more productive correctional system, and law enforcement's concern that discharged inmates will not continue to threaten society (or themselves).

At present the concern is with Hispanics. However, with the large migration of peoples from other countries, speaking other languages, it is conceivable that in the 21st century the bilingual prison may be catering to another language group. Today the Bilingual Education Department of the New York State Education Department, provides bilingual instruction in sixteen languages throughout the state. Of course, we don't anticipate ever having to face that large a number of people in prison with so many divergent tongues.

But just as the commercial and business world in our major metropolitan areas is taking on a bilingual profile, so should correctional systems keep pace in their personnel and programmatic decisions.

The best way to rehabilitate or resocialize the Hispanic inmate is to improve all educational and counseling programs for all inmates. The best way to address the needs of Hispanic inmates during the institutional day is to improve the services provided to all inmates. There should be a change of attitude among prison administrators, teachers, social workers, custodial personnel and others who come into contact daily with inmates as to their responsibility and their commitment to this serious communications challenge. We are all aware that rehabilitation still takes a back seat to other "priorities" in prisons. We all know there are not enough professionally trained people in corrections to handle the mammoth job of teaching and counseling all inmates.

Former Commissioner of Corrections for New York City Benjamin J. Malcolm (and now Vice Chairman U.S. Parole Commission) summed it up when he said in 1973:

> Though we need to recruit and retain a significantly larger group of Hispanic professionals and custodial personnel in the years to come, we cannot do so without the assistance of the Hispanic community in general whose confidence, support and enthusiasm are important if we are to humanize the correctional system and make it produce for each and every citizen in our country.

Submitted by
Agenor L. Castro

FOOTNOTES

Footnote 1: NYS DOCS Research Division, March 30, 1980.

Footnote 2: The Federal general population decrease is due to the fact that in recent months the U.S. government is "selectively prosecuting major cases" and relegating other, less serious cases to state authorities.

Appendix A: Recommendations

The following are some recommendations to be considered individually or collectively in humanizing the correctional environment in respect to Hispanic inmate and staffing needs:

Recommendation #1 - Educational Programs

A. Each state should hire a bilingual educational coordinator, to work out of the system's central office, coordinating the activities of the bilingual educational staff throughout the state. That individual should also work on curriculum development and periodically monitor and evaluate the quality and quantity of bilingual instruction given throughout the system.

B. A varied educational package should be offered in institutions where a significant number of Hispanics are confined or where a large portion of that number are English handicapped. The emphasis should not be just on more classes or instructors but better trained bilingual teachers and better and more ample bilingual teaching materials, both printed and audiovisual.*

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* The New York State Senate (& Assembly) passed a bill on March 20, 1980, amending the Correction Law to read as follows: "Bilingual and bicultural academic instruction required. In every facility, all academic programs and courses for inmates with limited English speaking ability should be delivered in the dominant language of the inmates in addition to English, when such facility has an inmate population of 300 or more and in which 10% of the population comes from a single cultural and language group and has limited English-speaking abilities." (The Bill--S. 8386--was vetoed by Gov. Hugh Carey but will be reintroduced in the next legislative term. It was spearheaded by the seven members of the New York State legislature: Assemblymen Montano, Serrano, Nine, Robles and Del Toro and Senators Ruiz and Mendez.)

C. Funds should be provided to alien inmates to pursue post high school educational programs similar to those offered other inmates who may be able to avail themselves of TAP, VA or other funding sources.

Recommendation #2 - Personnel

A. Affirmative Action and Equal Employment Opportunity policies must be rigidly pursued which will result in the hiring of more Hispanic or Spanish speaking personnel.

B. Hispanic custodial personnel should be assigned to posts and given hourly schedules which will permit them maximum contact with Hispanic inmates.

C. Spanish speaking personnel should be offered promotional opportunities (similar to other employees) and, where practical, permanent Civil Service Status.**

D. Spanish speaking personnel should be encouraged to relocate to rural areas where large facilities are located. Where necessary assistance should be rendered in housing, educational assistance for children and community acceptance. For those preferring to commute long distances, consideration should be given for transportation subsidies and convenient work schedules.

** Too often the majority of Hispanic civilian personnel are hired on Federal grants and/or on provisional basis and are the first to be dropped when that funding source ends. Wherever feasible, systems should try to keep these people by transferring these jobs to state or municipally funded budgetary items.

E. Personnel should work closely with Civil Service, Budget, the Unions and other concerned agencies to evaluate current Civil Service examination and recruiting procedures. All job titles should be periodically screened to ascertain whether or not they qualify for Spanish speaking parenthetics. This also applies to higher level positions.

Recommendation #3 - Staff Training

A. Programs should be established to indoctrinate non-Hispanic or non-Spanish speaking staff regarding Hispanic cultural, language and ethnicity. Occasional visits to urban areas or meetings with other criminal justice professionals who deal primarily with Hispanic offenders would be helpful.

B. Spanish-as-a-second-language courses should be offered staff by institutions, or at local high schools and community colleges with the state or municipality picking up the tuition costs.

C. In-service training courses as well as entry level courses for new custodial recruits should include topics on Hispanic issues and Hispanic inmates. If possible an Hispanic staff member should be assigned to the training complex.

D. Outsiders, either from schools or related agencies should be periodically invited to lecture staff on current Hispanic topics which may impact on institutional relations between staff and inmates.

Recommendation #4 - Discriminatory Practices (Staff)

A. Commissioners should closely monitor and take personal responsibility for situations in which discriminatory practices are alleged by minority staff members.

B. Internal disciplinary mechanisms, in conjunction with local Civil Service and Labor Relation policies, should be enforced to ensure compliance.

C. An internal grievance procedure should be utilized -- at the institutional, regional or central office levels -- to quickly resolve allegations of discrimination to the satisfaction of all parties concerned.

Recommendation #5 - Discriminatory Practices (Residents)

A. Every charge of discrimination alledged by inmates against staff (or other inmates) should be quickly dispensed with and if allegations are proven stern disciplinary measures taken.

B. A committee composed of staff and inmate members should be established to look into those charges.

C. Complaints brought to the commissioner's office either by reports or inmate correspondence should be relayed to superintendents for prompt attention. A report should be demanded from institutions as to what measures were taken to resolve the charges and what measures are being considered to insure the practices are not repeated.

Recommendation #6 - Internal Communications

A. Rules and regulations should be provided for incoming inmates in both Spanish and English.

B. Posters and signs should be displayed in visiting rooms in both languages.

C. Forms, especially those dealing with essential items which affect inmate programs and disciplinary procedures, should be printed in both languages so as to reduce misunderstandings or deny inmates due process.

Recommendation #7 - Classification

A. Testing procedures and examinations given inmates, upon entering the system, should be conducted in Spanish and English.

B. The Reception & Orientation division (or similar function) in a system should have spanish speaking testers and evaluators who will sit in classification committees determining future inmate assignments.

C. Each school facility should implement an effective testing and evaluation component to correctly identify the educational needs of spanish speaking inmates so they will not be unnecessarily denied educational opportunities.

D. Efforts should be made to route as many Hispanic inmates to a particular institution who have common educational or programmatic needs.

E. Attempts should be made to avoid sending Hispanic inmates to facilities where it is known Hispanic or Spanish speaking personnel are difficult to hire or retain.

Recommendation #8 - Therapeutic Programs

A. Bilingual group counseling sessions should be provided for persistent drug and alcoholic abusers.

B. Group sessions should be made available to handle personal, family, medical or related problems either with staff personnel as advisers, outside volunteers or inmate peer counselors.

C. Space and necessary materials should be provided to insure the continuity and success of counseling programs.

Recommendation #9 - Religious Services

A. Spanish speaking clergy should be assigned institutions with large Hispanic populations.

B. In smaller facilities visiting or local clergy should be hired on a part-time basis to provide religious services in Spanish.

C. A program of community chaplains should be instituted to support institutional chaplains providing community-based resolution of religious, financial or personal problems.

D. Bible Societies and other religious groups should be contacted who may provide liturgical materials, bibles, biblical teachers, etc., at no cost to the institution.

E. Periodic checks should be made of the Hispanic population to ascertain what religious subgroups may have to be accommodated (Pentacostal, Assembly of God, Seventh Day Adventists, etc.).

F. Ministers, Priests and other religious support personnel should be considered permanent and important members of the institutional management team.*

Recommendation #10 - Institutional Menu

A. Institutional menus should on occasion include meals which contain Hispanic dishes as is now done with Soul Food dishes for Black inmates in some facilities.

B. Inmates should be permitted to prepare Hispanic dishes for their own festivals or pay to have them catered from the outside.

Recommendation #11 - Commissary

A. Hispanic foodstuffs and beverages (non-alcoholic) should be sold in institutional commissaries where the volume of sales warrants stocking those items and where distributors may be contacted willing to make deliveries.

Recommendation #12 - Inmate Cultural Groups

A. Institutional support should be given to the formation of Hispanic inmate groups, providing, where feasible, space for them to meet and incidental supplies.

B. Hispanic groups should be allowed the opportunity to schedule ethnic festivals (San Juan Bautista Day, Discovery of Puerto Rico, Juan Marti Day or the more important Mexican religious and historical holidays).

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* Too often chaplains are "taken for granted" and not given more authority or responsibility for custodial and programmatic decisions affecting their congregations.

C. Families and friends should be permitted attendance at these festivals.

Recommendation #13 - Parole Assistance

A. Institutional parole officers should have a staff aide who can speak and read Spanish so assistance can be given inmates preparing for parole board appearance.

B. A Spanish speaking interpreter should accompany a non-English speaking inmate who may appear before the parole board.

C. Preliminary interviews should be considered to help insure that inmates' rights are not being violated or that they will be refused parole because of non-program participation which is not their fault but rather a reflection of program deficiencies in the institution.

Recommendation #14 - Legal Services

A. Institutions should assign at least one educated bilingual inmate to the law library who can read, write and interpret legal papers for Hispanic inmates.

Recommendation #15 - Recreation & Sports

A. Funds should be provided from the general inmate recreational treasuries to provide for: occasional screening of Spanish language movies; purchase of Spanish books, periodicals and newspapers for the library; incidental expense monies for visiting Hispanic entertainers; purchase of latin records, 8-tracks or cassettes to be played over the inmate radio systems and dominos.

B. If the athletic facilities permit, soccer should be an approved sports activity for Hispanic inmates.

C. For Hispanic females similar purchases of spanish language books and womens magazines should be allocated.

D. Funds should be available for Hispanic organizations to publish their own Spanish language inmate periodical, if permitted by departmental regulations.

Recommendation #16 - Pre-Release Programs

A. Pre-release programs should be bilingual in staff and operation. The centers should compile lists of Hispanic community organizations, ex-offender programs, housing, training programs, employment referral services, etc.

B. Peer counselors, who can speak spanish (as in the case with New York State's Compadre Helper program) should be assigned to the pre-release unit to help inmates about to be discharged on parole or transfered to work and study release centers.

Recommendation #17 - Community Relations

A. A spanish speaking, or Hispanic officials should be assigned by the correctional department to serve as community liaison, resource scout and advisor to the executive staff on Hispanic issues within the state. Said person should be well known to the Hispanic community and serve as a buffer between the system's administration and the Hispanic community.

B. Volunteer services directors should try to recruit Hispanic volunteers to provide assistance in cultural, rehabilitative and educational programs in areas where a potential pool of Hispanic volunteer resides.

C. Institutional directors should make themselves available for speaking engagements before local Hispanic community, civic, religious, fraternal and social groups.

D. Commissioners, and their senior divisional advisers, should also make themselves available to statewide Hispanic organizations, seeking their support and resources to buttress institutional programming objectives. Periodic meetings with community leaders (and Hispanic legislators) would enable Commissioners to get support on budgetary requests which may impact on Hispanic inmate programming.

BILINGUAL PROGRAMMING:
A VIABLE ALTERNATIVE IN CORRECTIONS -- PART B

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Hispanics involved in organized criminal activity are having a tremendous impact upon the entire Criminal Justice System and represent a real threat to our society. The growing impact of prison gangs in the community has been the subject of intense discussion in criminal justice workshops, the intelligence community, and in the media, particularly gangs such as the Mexican Mafia and Nuestra Familia.

Law enforcement agencies know little about Hispanic Criminal organizations and have not been able to curb the growing development of multibillion dollar Hispanic controlled narcotics operations in Florida, California and other areas of the nation. Contributing largely to this dilemma is the fact that data concerning Hispanic offenders is very limited or completely lacking in arrest statistics, court caseloads, juvenile delinquency reports, public surveys and victimization studies. In the absence of accurate, detailed and reliable data on Hispanic offenders, it would be logical for criminal justice agencies to seek out the most qualified personnel to deal with this dilemma; the Hispanic Criminal Justice Professional.

While the solution to the problem sounds simple, several obstacles exist. The biggest obstacle is the commonly accepted belief that Hispanic representation and bilingual programs for Hispanic offenders in correctional systems are not needed, because Hispanic offenders should learn to speak English if they plan to succeed in this country. To make matters worse, many correctional and law enforcement administrators only pay "lip service" to affirmative action and their affirmative action programs are geared to barely

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comply with Federal statutes, thus contributing more to the shortage of Hispanic employees.

While the activities of prison gangs, such as the Mexican Mafia and Nuestra Familia, are mostly limited to the geographic locations of California and several Southwestern states, their influence is felt throughout the country. Hispanic inmates in the Federal Prison System and in the Correctional Systems of several Central and Eastern states are emulating the Mexican mafia. This development can be traced in part to the communications networks that have been established by various activist groups involved in organizing inmates, as well as the presence of actual Mexican Mafia members in prison populations.

Correctional administrators have been reluctant to accept the presence of articulate Hispanic inmate leaders who operate their prison rackets from "behind the scenes" through their loyal "lieutenants." They have also been reluctant to accept the fact that Hispanic inmates, particularly Hispanic-American inmates, are now highly politicized and are keenly aware of the political climate in their home states. The articulate Hispanic inmate leaders are reflecting the new awareness of Hispanic leaders in the communities and are demanding Hispanic representation in the correctional systems. When they fail to find such representation, their claims of insensitivity are reinforced, and they carry this message to their peers. Their beliefs are further reinforced when they transfer from one correctional facility to another and see the lack of Hispanic professionals throughout the correctional systems; counselors, teachers, sergeants, lieutenants, captains, deputy superintendents, superintendents, deputy commissioners, and commissioners are all lacking. Negative attitudes are easily cultivated whenever groups of persons feel neglected. Unfortunately, this frequently occurs with Hispanic inmates. All too often, Hispanic inmates who serve sentences for victimless crimes come out of prison fully trained and well conditioned to commit violent crimes. These individuals are frequently living in our communities as walking time bombs that could explode at any time.

In the absence of peer models for Hispanic inmates to emulate, some of these inmates frequently attempt to form Hispanic cultural inmate organizations or establish ties with outside Hispanic organizations. Traditionally these efforts have been discouraged by correctional administrators and frequently only minimal efforts have been made to determine if the organizations are legitimate or if they might prove beneficial to the inmates and the institutional resocialization program. The administrative hostility towards Hispanic organizations often extends to Hispanic employees. Attempts by Hispanic employees to form fraternal organizations reportedly have resulted in reprimands from superiors or harassment in the form of stricter enforcement of work rules and inflexibility in work schedules. Many new Hispanic employees also complain that these tactics are used to "weed them out" during probationary periods.

There have been complaints from Hispanic employees in various criminal justice agencies that promotions are based upon possessing or exhibiting the "proper" attitude. Promotions based upon such criteria reportedly have resulted on a frequent basis in the promotion of Hispanic employees with whom other Hispanic employees and inmates do not relate. Inmates refer to such employees as "Hispanos Falsos" of "Engabachados."

When confronted about the lack of Hispanics in decision-making positions, administrators frequently state that there are simply not enough qualified Hispanic employees in correctional work. If this is so, then there is no possible excuse for the underutilization of existing Hispanic professionals in the criminal justice system.

It is not uncommon to encounter Hispanic college graduates working as policemen and correction officers at the entry level. Hispanics who have graduated with honors from accredited universities frequently find themselves working under the supervision of non-Hispanic supervisors with no more than a high school education.

If Hispanic employees are such a rare commodity, then this type of underutilization represents gross mismanagement and lack of sensitivity to the needs of the criminal justice system and to the needs of society.

CONCLUSION

There is a need for the complete revamping of the existing Civil Service laws and criteria for promotion if Hispanics are ever to contribute fully towards the solution of the national menace that Hispanic organized criminal activity presents. Currently it is the Hispanics who hold the key to curbing this criminal activity.

RECOMMENDATION #1

Since most Criminal Justice Agencies are structured in the paramilitary mode, these agencies should follow the example of the military in their staffing. There should be strict adherence to the ranking and promotion of personnel. Personnel without college degrees should be limited to noncommissioned officer ranks (sergeant). Administrators and commissioned police and security personnel above the rank of lieutenant should be required to have at least a baccalaureate degree and should be required to participate in a training program for advanced professional placement such as the Army's Officer Candidate School.

Those criminal justice executives and commissioned officers who currently do not possess the necessary academic credentials should be given an opportunity to complete the necessary studies within a specified time frame. The United States Army successfully accomplished this during the early 1950's. Failure to obtain a college degree within a specified period of time would result in the removal of such administrators or executives or a reduction in rank to noncommissioned officer (sergeant). The implementation of such a plan would upgrade the level of professionalism and would offer an avenue for the advancement of highly qualified Hispanics who currently are being severely underutilized in almost all criminal justice agencies.

RECOMMENDATION #2

A system of ongoing evaluation of personnel should be established such as the Army's Officer Evaluation Report. These periodic evaluations should note progress and growth not only on the job, but also community involvement, community leadership and academic accomplishments. In this manner, each professional's progress would be monitored and professional growth could be nurtured throughout their career.

RECOMMENDATION #3

Criminal Justice Agencies have had relatively little success in training non-Spanish speaking personnel to speak Spanish. Incentives are needed to encourage such study. This could be accomplished by offering extra pay for bilingual proficiency and Conversational Spanish courses to personnel with time off from regular duties to attend such courses.

RECOMMENDATION #4

Extra score points ranging from 5 points to 10 points should be granted in Civil Service Examinations to those individuals with bilingual skills who have been disqualified by missing the passing score by just a few points. There is no evidence to indicate that such individuals could not perform the job after the usual training sessions or courses.

RECOMMENDATION #5

Each agency should develop the capability to continually monitor the progress of personnel beginning at the entry level. Frequently personnel are recruited into the system as high school graduates and on their own initiative complete college educations during their off-duty hours. Such accomplishments should be noted and acknowledged with a personal letter of congratulations from the commissioner in charge of the agency. Such accomplishments should also count heavily in granting promotions. If promotions are granted on the basis of competitive Civil Service exams, such accomplishments should be rewarded by granting extra grade points in the exam.

RECOMMENDATION #6

Civil Service laws should be amended so that college graduates with baccalaureate degrees who place in the upper ten percent (10%) of their graduating class are exempt from taking entry level examinations. Such individuals should be admitted into service in Criminal Justice Agencies solely on the basis of confirmation of outstanding achievement from the university and an oral interview.

RECOMMENDATION #7

States and localities in which large scale Hispanic criminal organizations exist should be offered financial assistance from the Federal Government in placing undercover Hispanic policemen in deep cover. These policemen should be placed in the community for several years in order to penetrate Hispanic Criminal organizations that frequently resemble extended families.

RECOMMENDATION #8

The Ethnic identity of every offender should be noted on all documents that are utilized to compile criminal justice statistics.

RECOMMENDATION #9

The United States Attorney General should give priority to cases of racial discrimination against any minority criminal justice employee and should develop cases of conspiracy to viclate the civil rights of these employees and vigorously prosecute such cases.

Submitted by
Paul Garcia

EXPLORING THE RE-ENTRY AND SUPPORT SERVICES FOR HISPANIC OFFENDERS

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INTRODUCTION AND STATEMENT OF THE PROBLEM

Incarceration costs in this country's prisons and jails, both in dollar amounts and in wasted human resources, are appallingly high. This is evident to an even greater degree with ethnic minorities comprised primarily of Blacks and Hispanics.

Due to a change in public sentiment from an insistance on rehabilitation to a demand for harsher punitive action and incarceration of offenders, there has been a recent surge in prison populations. Between January 1, 1972, and January 1, 1979, the nation's prison population soared from 174,500 to 303,000, an increase of 73%. This indicates an increase in the overall rate of incarceration from 152.8 persons per 100,000 citizens to 192.9 per 100,000 in 1978, while most European countries reflect a consistant rate of well under 85 persons per 100,000.[12] Bed construction costs are about $70,000 with annual costs ranging about $10,000 per bed. This indicates a crucial need for alternatives to incarceration and viable programs and support services to insure a stable and successful re-entry into the community.

Studies nationwide such as the NIC Differential Incarceration Rate Seminar held in Florida in January 1980 and California's Health and Welfare Agency Task Force on Incarcerated Minorities established in June of 1979, point out that there exists a huge proportional disparity in incarceration rates between the white population and that of minorities... and that those numbers are increasing. As indicated by testimony in California, the public perceives that cultures other than the predominant White middle class are of less

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value. Due to this perception there exists a history of harsh treatment of people who have been somehow distinct and different, regardless of whether they were newcomers or natives. Thus, those who are racially, culturally, and economically distinct have become the target for devaluation and discrimination.[6] The end result is that barriers are raised within social institutions denying sub-groups the opportunity of access or full participation in society. Social and economic status are synonomous. Economics is considered to be at the base of discrimination against and incarceration of minority people. Minority unemployment, rates of crime, and rates of incarceration are closely related. There are many causes for minority crime, such as the disintegration of the family, lack of quality education, alienation, substance abuse and numerous others, but perhaps the most obvious is denial of meaningful employment.

This brings us to the topic of this paper which is a focus on the needs of Hispanic offenders and an examination of available re-entry and support services. The most glaringly obvious need is to have the government focus on the topic of re-entry by concentrating attention and financial resources in that area. To effectively prevent recidivism and to aid in successful transition from prison to productive law-abiding citizenship, the minority communities -- Black and Brown, need programs which deal with the causes and symptoms of poverty and discrimination. Major changes in the attitudes and structure of society are essential in order to accomplish increased employment, greater tolerance for cultural differences, equal opportunity, and relevant education for minorities. While the needs and conditions of Black and Hispanic groups are very closely related, there are some obvious distinctions in circumstances due to language and cultural differences. This paper will concentrate primarily on that of the Hispanic offender.

CULTURAL DIFFERENCES

The highest rates of unemployment traditionally are found among young minorities. Hispanics in this country are estimated to number between 14 and 19 million persons.[1] Projections are that Hispanics will become the largest and also the youngest minority group in the 1980's and 1990's, yet adequate attention, by way of services or programs are neither prevalent nor capable of serving this large population. Like other minorities, Hispanics suffer from poverty, discrimination and isolation from the social, educational, political and economic mainstream of society. As a result, they suffer disproportionately from the effects of crime and lack the resources to address this phenomenon. If a person is not educated adequately nor respected enough to demand positions of power or influence, they will continue to be victims of crime or involved in crime as a means to survive. The greatest contribution to the reduction and control of crime and delinquency that can be made by the Criminal Justice System (CJS) is to end practices leading to criminalization and to initiate socialization process and experiences. Additionally, advocacy for better education, housing and jobs can greatly contribute to positive image and productive adulthood.

Rather than labeling as anti-social, it is most important for understanding to be developed for proper interpretation between the Hispanic subculture and that of the dominant culture. Some of the differences involve such basic concepts of culture as value systems, degree of acculturation, family relationships, and language patterns. In addition, other factors include economic status, place of residence, and recency of immigration. Due to factors affecting rate of assimilation, differing composition by region, status or background, uniformity in the Hispanic value system cannot be easily defined. Values involve the individual's beliefs concerning the world and his position in it. At times they are unconscious assumptions people make about the appropriateness or inappropriateness of ideas or actions. Values then have a universal referent and a judgemental character. The resultant effect is that values generate attitudes and, finally, action. Some universal Hispanic values include: 1) importance of the immediate and extended family; 2) the concept of self-pride and individual worth; 3) authority of the father as unquestionable; 4) distinct sex roles with male dominance; 5) orientation to present time needs-enjoying life of the present; 6) acceptance of life as it exists-spiritual and social aspects of life valued; 7) emotional relationships important, warmth and affection openly expressed.

Such lists can easily infer a positive or negative quality based on the viewpoint of the beholder. Since some may not be perceived by the dominant society as leading to material "success" they may be given a negative connotation. When applied to those holding ex-offender or inmate status there is additional conflict of varying points of transition between the Hispanic and Anglo cultures and the conflicts generated by feelings of not fully belonging to either group. If Hispanic offenders must return from prison to a situation in which they face a disintegrated family situation, no employment possibilities, inadequate skills or education, poor living conditions and discrimination -- they are defeated without a choice. They must face resignation to shame, guilt, substance abuse and -- more crime.

The Hispanic orientation is to suffer silently, not to air private matters or discuss problems with outsiders, handling authority by "taking one's medicine" rather than fighting back (or preparing a proper defense). Also, when confronted by authority, they will avert eyes as a gesture of respect. Hispanic culture considers it defiant or insolent to dare look their father or other authority figures in the face when being disciplined. Yet to an Anglo, this person would be seen as evasive or dishonest, i.e., guilty. These conditions may result in alienation from both cultures and survival as part of a "gang" in which he can vent frustrations through hostility, aggression, withdrawal, and other anti-social, delinquent or illegal behavior. They then become the statistics indicated only by school failure, unemployment and arrest.

LANGUAGE NEEDS

All of the preceding are evident prior to complications imposed by the reality of the language barrier. A child's self-concept, his role in his family and society are dependent on his ability to communicate. Yet, his entire self-image and that of his family is devalued when he enters school and is expected to learn English as quickly as possible and to reject all that he knows and adjust personally and socially to a new environment and to a new language. He is bewildered and confused and may not ever be able to communicate effectively in either language.

It is urgent that at all CJS contact points, language needs should be consistent with fair and equitable treatment of non-English speaking persons. There is a great need to make necessary changes in the justice system to put non-English speaking persons on an equal footing with English speaking persons relative to: 1) obtaining a fair and impartial trial; 2) equivalent treatment by justice agency personnel, and 3) reasonable access to justice agency services. A strong emphasis should be placed on increasing recruitment, hiring, retention and promotion of CJS practitioners who are bilingual and bicultural and representative of the clients served. Language and cultural training should be provided to justice agency personnel. Such in-service or academy training should include an orientation to the principal foreign language(s) spoken (usually Spanish), in the area served; exposure to cultural characteristics of minorities; sharpening of human relations skills; and instruction on procedures for dealing specifically with incidents involving non-English speaking persons.[17]

There is a need to prepare and distribute information on the workings of the justice system to Hispanic citizens and clients. Information relating to how to use the various justice agencies and the rights and options of citizens should be published in translation and disseminated to the Hispanic.[17] In particular booklets prepared by the Bar Association and other informational bulletins should be made available on a wide-spread basis by justice agency community relations programs. Some Spanish-speaking or limited English speaking people perceive the justice system as one unified adversary process aligned against them. Misconceptions arise as to actions and motives of justice agency personnel, particularly law enforcement officers, which contribute to perceptions of mistrust and inequitable treatment.[1] In order to correct the bias and stereotypes held by both Spanish-speaking citizens and English-speaking personnel, lines of communication and understanding must open-up between them. This can best be done through enhancement of community relations programs, crime prevention programs, support services and other positive efforts brought directly into Hispanic communities. Such programs should involve bilingual personnel assisted by community representatives in devising the programs and in presenting them to the community.

ECONOMIC STATUS

According to the Vice President's Task Force on Youth Employment, data shows that unemployment for all youth in 1979 was at 13.9%, while for Black poor it was 20.7% and for Hispanic poor it was 37.0%.[16:12]

> If your family is poor, your chances of a smooth school-to-work transition drop way down. Youth from poor families tend to enter the labor market at lower levels than their peers and are likely to fall further behind as time goes on. Their chances of catching up are slight ... It is unrealistic to expect a rapid decrease in the number of dropouts or poor families. The number of minorities, particularly Hispanics, will increase.[16:12]

For those who are poor and have the additional burden of minority status, criminal record or history of alcohol or drug use, coupled with language or cultural barriers, the chances for success are insurmountable. It is no wonder, then, that there are pockets of multi-problem areas where criminal history or welfare status is a pattern for generations. Unemployment becomes only one symptom of a lifetime of trouble and hurt. In order to begin to combat this horrendous condition, a concerted effort must be launched to combat the conditions and circumstances at the root of this problem. This can best be accomplished by attention and resources from established public and private agencies aimed at providing the means of transition to a lifestyle in which dignity, self-determination, and productivity can be attained. Not everyone has the capability nor the will to change criminal or negative activity; however, all should have the option of choosing and should have ready alternatives to destructive or illegal behavior.

PRE-RELEASE EFFORTS AND EXISTING PROGRAMS

The inmate profile is one described as young, male, unmarried, illiterate or poorly educated, poor job skills, and prior convictions. An omitted factor is minority status -- Black or Hispanic.

Most experts agree that the single best predictor of recidivism is joblessness. Statistics point out that the highest rates of unemployment traditionally are found among young minorities. The youngest (21 median age) and fastest growing minority group is the Hispanic.[16:17] However, there are no public agency programs currently operating to specifically serve this client group![5]

Pre-release efforts from incarcerated status to freedom are oftentimes happenstance. The attempts at service are sporadic, poorly coordinated or non-existent. In some institutions a pre-release unit offers a full array of referral and support services, while in others the service is provided by other inmates, other staff such as librarians, secretaries, or by no one at all. Half-way houses have a limited capacity: They are not geared to Hispanic mores nor located in a geographic areas amenable to their lifestyles. No attempt is made to address the complications of language or culture. The Hispanic inmate is expected to take whatever is offered from a dominant cultural standpoint. Vocational and educational programs are inadequate for Hispanics and poorly coordinated with unions, businesses or other community resources. Parole plans are considered and discussed at the conclusion of a prisoner's sentence, rather than planning ahead so as to leave sufficient time to acquire a readiness for community re-entry. No parole programs are made for prisoners with an INS hold, whether they will be deported or not is not known, and little attention is given to the possibility of the person remaining in this country. Family interaction is limited by geographical separation of programs.[6]

Admittedly, there are a number of worthwhile community based organizations (CBO). However, many are inadequately funded, transitory or limited due to insufficient staffing or large workload. A sampling of some of the better programs available are described below:

AYUDATE-EAST LOS ANGELES, CALIFORNIA

- Prevention and Manpower services focusing on drug and alcohol abuse, and juvenile delinquency counseling
- Project New Pride, a school alternative program
- Target areas: East Los Angeles, Pico Rivera, Wilmington and Huntington Park
- Bilingual staff: Spanish/English

EL PROYECTO DEL BARRIO-SAN FERNANDO VALLEY, CALIFORNIA

- Drug related problems, detoxification referrals, diversion, narcotics anonymous meetings, parole and probation liaison, legal assistance, community resource referrals
- Work Experience Center. CETA economically disadvantaged criteria. Must reside in San Fernando Valley.
- Bilingual staff - Spanish/English

MEXICAN-AMERICAN OPPORTUNITY FOUNDATION-LOS ANGELES, CALIFORNIA

- Supportive services, job placement, and follow-up housing relocation, counseling, social skills development
- CETA, on-the-job, work experience and classroom training available

- Former inmate program
- Bilingual staff - Spanish/English

Unfortunately, while excellent programs such as these do exist, they must continually compete for funding on a yearly basis, or face serious curtailments in service or closure. The number and quality of rehabilitation programs is deteriorating while concentration of minorities in prison or jails increases. The employment service, youth or adult corrections, Probation Departments are involved in an effort to address the needs for skills development, or job preparation to the degree needed to positively impact this client group.

While there are numerous other local programs designed to provide services to disadvantaged groups including the ex-offender, the justice agencies appear to "pass-the-buck" by expecting another agency, CBO, or mere chance to address the problem. Some programs initiated by the Department of Labor include the Comprehensive Employment and Training Act (CETA), Targeted Jobs Tax Credit (TJTC), Youth Employment and Demonstration Projects Act (YEDPA) and Private Industry Council (PIC) (See Appendix)

To respond to the needs and problems of a given community, there must be a diversity of programs tailored to meet specific local situations. A cooperative and concerted effort by the CJS and other agencies who serve the ex-offender must be developed to assure uniformity, consistency and effectiveness in alleviating the problems. Increased understanding and communication should be encouraged and formalized. One example of an innovative approach to address the service needs of ex-offenders is the Correctional Consortium of Southern California which was formally established in June of 1979. It has no formal funding source and is comprised for the most part of local corrections administrators to address mutual concerns and share information.

The group discusses common goals and problems oriented around preventing and reducing crime, maintaining public order and securing justice. It is an outgrowth of the efforts of the Correctional Information and Resource Service of the State of California, which had been seeking to develop local coalitions to provide a link between ex-offenders, community based programs, correctional practitioners and governmental agencies.[7]

Included below are a list of recommendations provided by the Consortium Sub-committee on "Employment of the Ex-Offender" to which this writer is a member.

I. Relevancy of prison vocational education and prison industries.

A. Identify the following:

1. What skills are being taught and levels of proficiency.
2. What are the needs of industry.
    - a. comparable skill training
    - b. upcoming industry needs
    - c. use National Alliance of Business (NAB), Employment Service (EDD), Private Industry Council (PIC) and Labor.
3. What is blocking progress and/or change within institutions.

B. Proposed solutions

1. Increase multi-jurisdictional cooperation of government agencies.

   a. utilize resources of EDD and education

2. Develop statewide Trade Advisory Councils (TAC) for each level of corrections

   a. identify State Industries Commission purpose, possible tie in or nucleus of TAC

3. Involve industry directly in vocational education process

   a. on-site visits to institutions to determine relevancy

II. Work Release Programs

A. Provide incentives to inmates to train

1. Develop participation criteria i.e., inmate participation in vocational education, prison industries, academic, within institution work history, stability

B. Increase number of halfway houses

1. privately run
2. consistant funding (state, federal)

C. Lengthen number of months inmate can be released

III. Ex-offender as a non-target group

A. Identify non-traditional sources of funding i.e., Department of Energy, etc.

B. Education/Awareness of funding sources as to needs

C. Recommendation to funding sources on CBO's

1. does the need exist
2. is it a duplicate service
3. insist upon coordinated efforts or CBO

D. Utilize central point of information statewide, i.e., (CIRS) Correctional Information and Resource Service

IV. Job Service Providers

A. Establish standards for CBOs

B. Provide technical assistance to CBOs

C. Insist upon CBO consortium

D. Act as advisors to CBO consortium

E. Cross-liaison with consortiums

F. Utilize NAB and other existing coordinators of service

V. Financial Inadequacies

A. Identify resources to provide services

B. Identify need and present to funding sources

C. Pressure agencies that can provide resources, i.e., (DVR) Department of Vocational Rehabilitation

D. Proceed with credit union concept

VI. Jobs

A. Assist in public and employer awareness by working with major employment generating services

1. CETA prime sponsors

2. Employment Service

3. NAB

B. Provide technical assistance to above

C. Encourage corrections to seek funds from (DOL) Department of Labor for employment programs

In addition to the preceding, it is recommended that:

A. Criminal Justice Agencies provide culturally relevant socialization, job preparation and reentry services.

B. Increase Hispanic staffing and bilingual institutional programs to better serve Hispanic inmates.

C. Research be conducted by CJS to identify the specific needs and areas of concentration.

CONCLUSION

It is a widely accepted fact by Criminal Justice System practitioners that only 6 percent of inmates never return to the community and, further, that the first 90 days after release are the most critical in terms of preventing a return to incarceration. Even so, attempts to ease the transition from custody to freedom is often left to chance. Public sentiment is not conductive to ready acceptance of the ex-offender into the mainstream of society. The present trend is a law and order, hard-line stance. The general public is not aware, as pointed out by the National Alliance of Business, that as many as 45 percent of the U.S. population have a "record" of some kind. Changing the public opinion regarding the ex-offender, especially if he/she is a member of a minority group remains a difficult task.

There is a very high co-relation of unemployment to incarceration as reflected by Department of Justice figures.[4] Since the highest percentages of unemployed today are Hispanic youth and since the incarceration rates for Hispanics is increasing, it is crucial that programs be developed which are targeted specifically for Hispanics. Data is glaringly omitted at the federal level which differentiates Hispanics from either White or Black groups. Many Hispanic inmates are counted as Caucasion or Black yet are linguistically and culturally Hispanic. In addition, national references and studies speak only to Black issues when referring to minorities. There is an assumption that Hispanics are statistically insignificant, therefore programming and attention are not sufficiently geared to their needs. The Department of Justice and all other governmental agencies should compile accurate statistics reflecting the presence of Hispanic inmates and staff.

A most important consideration is the overall objective of establishing re-entry and support programs which include, not a radical change from Hispanic to Anglo orientation, but rather the provision of appropriate "opportunities" for the Hispanic inmate. These should be offered in a milieu that contains mutual acceptance and respect in which the individual can begin to change their attitude, behavior, and life situation to one in which they can succeed, or at least cope.

Submitted by
Monica Herrera Smith

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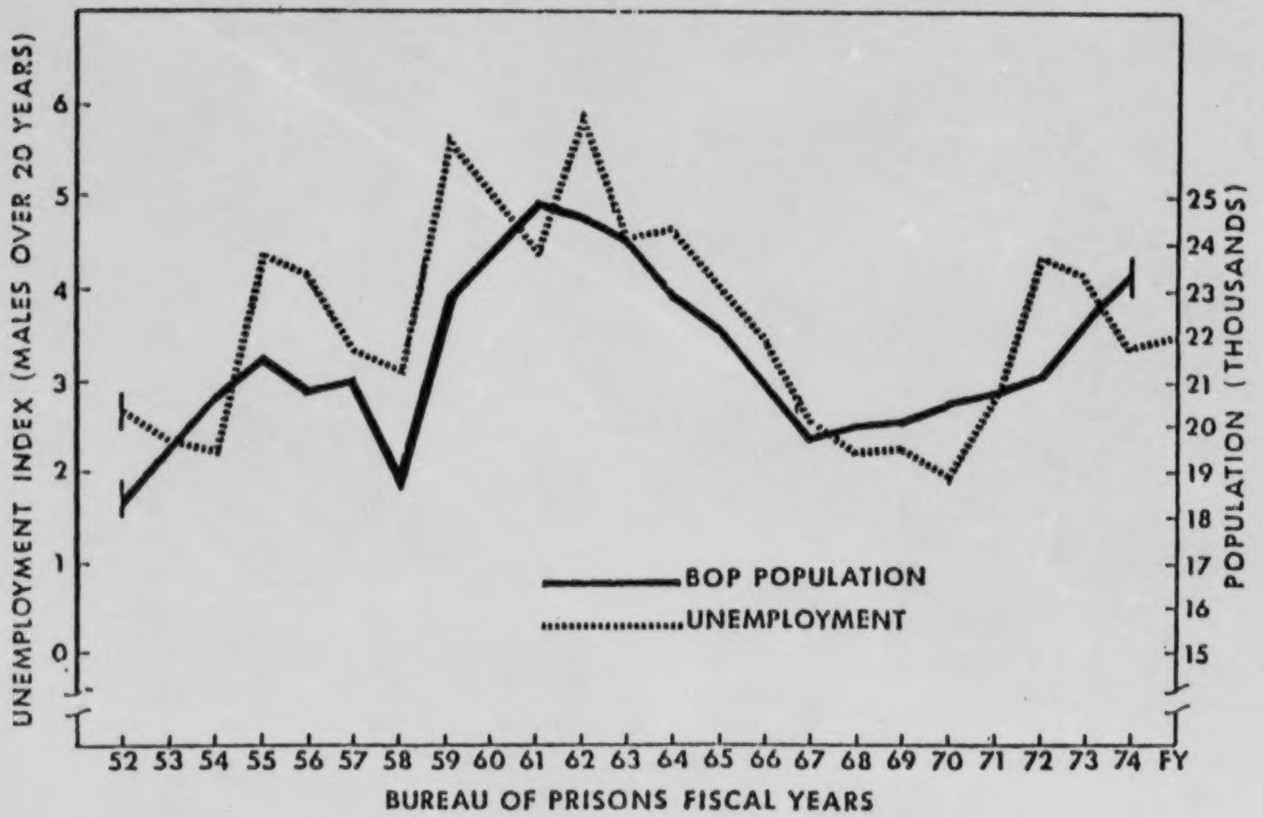
APPENDIX

BUREAU OF PRISONS INMATE POPULATION MATCHED WITH UNEMPLOYMENT INDEX FROM 15 MONTHS EARLIER



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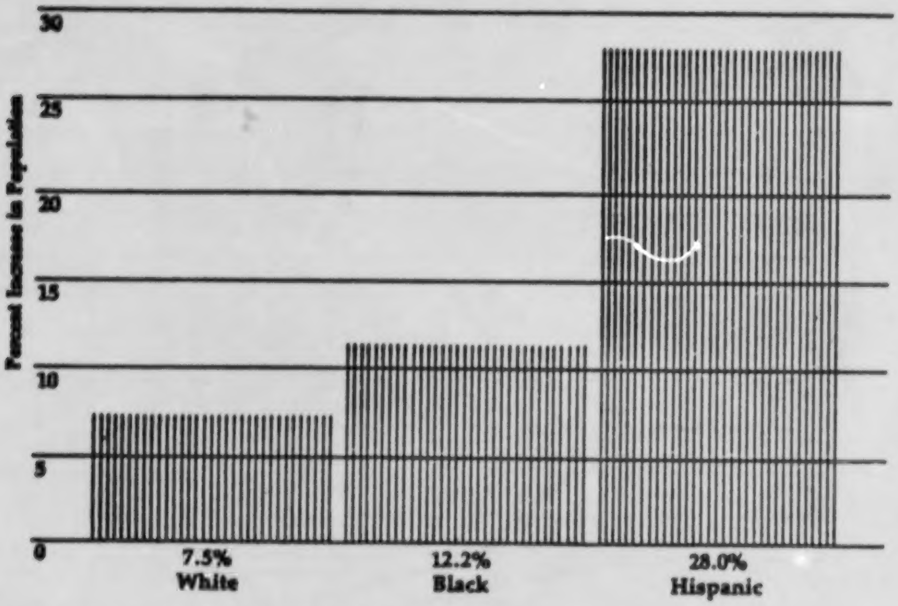
Appendix 2

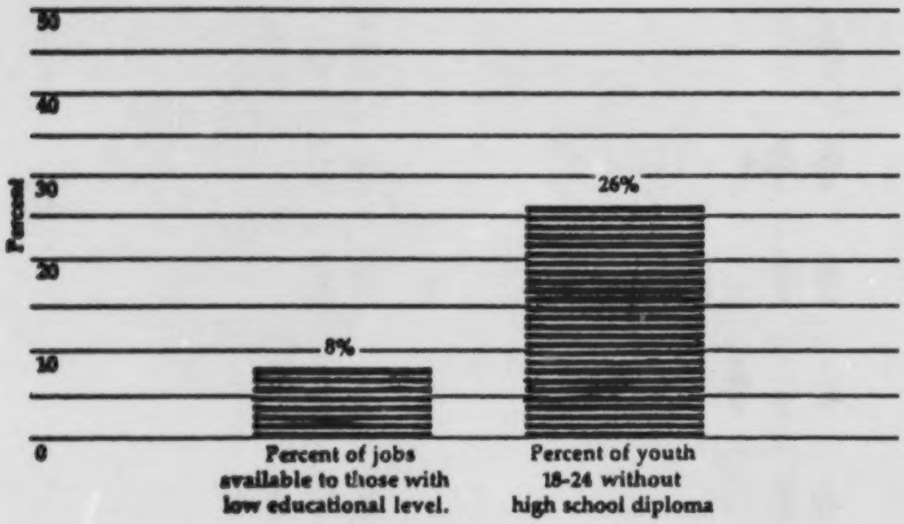
Population Growth Rates
1980-1990



Source: Bureau of the Census and Task Force

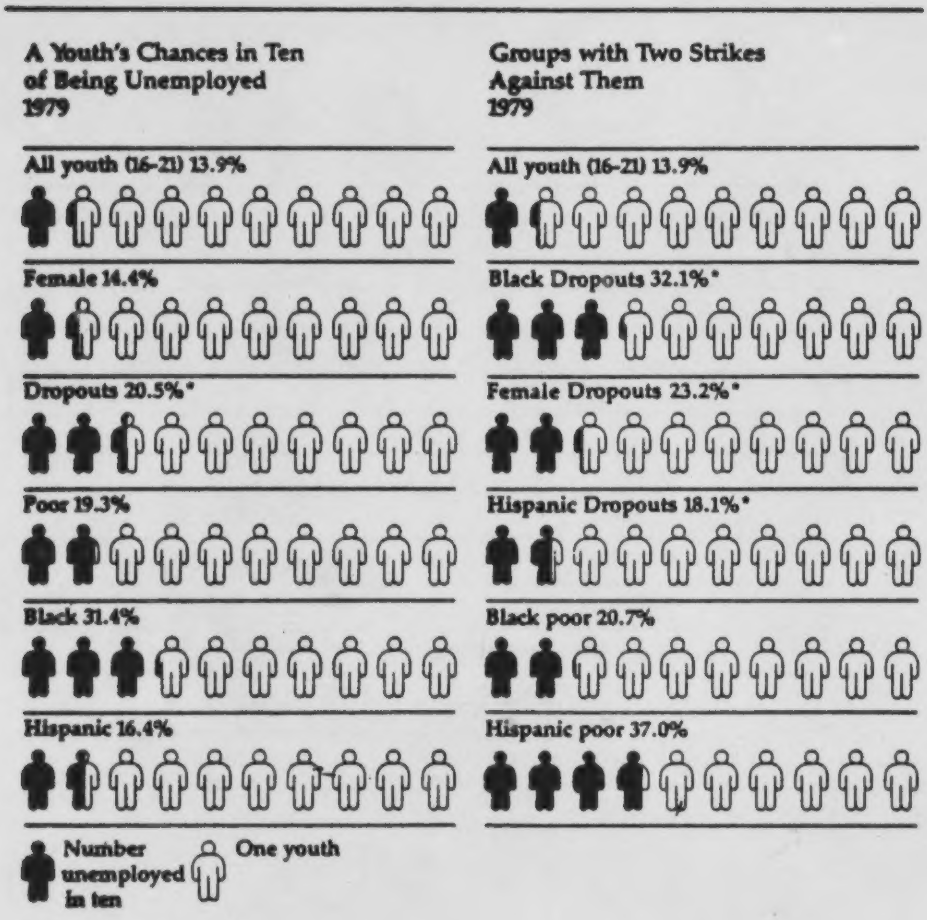
Appendix 3

The Job Mismatch
1970



Source: Ivar Berg et. al, and Bureau of the Census

Appendix 4



Source: BLS
**1978 Data; 1979 Data not available*

Appendix 5

Program Fact Sheet

U. S. Department of Labor
Employment and Training Administration
Office of Information

November 1979

Employment and Training Services for Offenders

Authority: Comprehensive Employment and Training Act (CETA), and the Wagner-Peyser Act.

Operation: Employment and training services are available to offenders through state and local governments that serve as CETA prime sponsors. A full range of job placement and employability services are available through the 2,500 local employment service offices (now identified in many states as Job Service). In many instances state and local CETA prime sponsors and the state Job Service may also make arrangements with correctional officials to provide employment and training services to inmates of correctional institutions.

Services Available Through CETA:

Assessment: Interviewing and testing to determine job readiness, aptitudes, and abilities.

Counseling: Assisting participants in the development of vocational goals and the means to achieve them.

Classroom training: Training in a classroom setting to teach basic vocational skills and provide remedial education. The trainee usually receives a training allowance.

On-the-job training: Training in a work environment to teach the vocational skills requred for a particular job. The trainee usually receives wages for which the employer can be partially reimbursed.

Work experience: Temporary subsidized employment in the public sector or in private nonprofit agencies designed to enhance future employability of participants or to increase their potential to obtain a planned occupational goal.

Public service employment: Placement with a public or private non-profit agency in a job that meets public service needs. The goal is to help the worker make the transition to unsubsidized employment.

Job development: Efforts to identify all available and projected jobs, and create new openings.

Job placement: Counseling, assessment, and matching the participant to job opportunities.

Supportive Services: Assistance in overcoming personal and environmental handicaps to help workers take advantage of employment opportunities. Among these services are transportation, health care, residential support, and legal services.

Services Available Through the State Job Service:

General Services: These include applicant registration, interviewing, testing, counseling, job development, recruitment, job placement, referrals to training, and other services concerned with preparing people for employment.

Federal Bonding Program: Provides fidelity bonding for offenders and others who need commercial bonding in order to obtain employment and who cannot get it through usual procedures.

(Over)

Appendix 5 (continued)

Targeted Jobs Tax Credit: Persons convicted of a felony who are economically disadvantaged and hired within five years of release from prison or conviction (along with members of six other "target" groups) can make their employer eligible for a tax credit equal to 50 percent of first year wages up to $6,000 and 25 percent of second year wages up to $6,000. The credit applies to wages paid during calendar years 1979 and 1980. Local Job Service offices can tell the employers how to obtain certification that the person hired is a member of a target group.

For Further Information: Contact a local CETA or Job Service office (see state government listings in the telephone book); the Employment and Training Administration, U. S. Department of Labor, 601 D Street, N. W., Washington, D. C. 20213; the Office of Information, Room 10410 at the same address, telephone (202) 376-6905; or any of the 10 regional offices of the Department (Boston, New York, Philadelphia, Atlanta, Chicago, Kansas City, Dallas, Denver, San Francisco, and Seattle), referring to local telephone directory for address and telephone number.

Summary
by:

Maria Gomez Daddio, M.P.A.

Final Policy Recommendations

Workshop Participants

CORRECTIONS WORKSHOP - SUMMARY

The workshop on Corrections brought together Hispanic professionals from State and federal correctional systems, educators, mental health practitioners and community based service providers who have been recognized for their work and knowledge of the correctional field. The workshop discussion was structured to be on the papers presented but general issue areas arose which transcended these topics. In studying the correctional institutions and system the members analysis was on three levels:

- Services to the Hispanic inmate
- Staffing patterns of the institution
- Level of Hispanic input at policy levels of the criminal justice system.

The recommendations developed were the culmination of the discussion that followed each paper. These are titled by the topic of each paper. Additionally, the recommendations that were from the general analysis of the field are those noted as such.

The papers and presenters were:

- "Psychological Testing of Incarcerated Hispanics" by Marcella De La Torre, Ph.D.
- "Bilingual Programming: A Viable Alternative in Corrections" Part A by Agenor L. Castro
- "Bilingual Programming: A Viable Alternative in Corrections" Part B by Paul Garcia, Jr.
- "Exploring the Re-entry and Support Services for Hispanic Offenders" by Monica Herrera Smith, M.P.A.

Marcella De La Torre's paper raised the concern that testing as it is

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currently done has serious negative implications for incarcerated Hispanics. She presented some of the problem areas which include:

- The interval problems of the tests themselves
- Cultural and language issues
- The lack of bilingual-bicultural examiners
- The lack of confidentiality of psychological records
- The damaging results of present testing techniques for many incarcerated Hispanics

The discussion resulted in the recommendations presented. Major discussion was on the need for development of proven methods of measuring competency of Hispanics as there are no current test instruments which have been validated for cultural differences. The discussion also resulted in recommendations focused on seeking alternatives to "paper/pencil" tests and to try such methods as currently practiced in New Jersey where a team of trained bilingual-bicultural professionals (pyschologist, educator, and vocational counselor) interview Hispanic inmates as they enter and subsequently move through the system.

A second major issue of discussion was the need for trained bilingual/bicultural professionals in the field. A third major issue was the need for more active advocacy by Hispanics to ensure proper methods of measurement and assessment are developed that would give more accurate analysis of Hispanic inmates.

The paper by Agenor Castro studied in depth the correctional institutions, the processing of inmates and the day to day services provided the inmate. His in depth analysis of the system and how it could be more effective in relationship to Hispanics led the discussion to issues relating to staff training, equitable accessability to educational/ vocational programs to all inmates, the programming of Hispanic inmates to limiting work assignments, the need not only for bilingual correctional staff but for staff that understand the culture, preferably from being bicultural.

The need for true affirmative action within the correctional system staffing patterns was the focus of Paul Garcia's paper "An Indictment: The Underutilization of Hispanics in the Criminal Justice System". He further studied the need for "professionalizing" the field of correction. The methodology to reaching this raised considerable discussion. An issue that was of concern was the incidence of discrimination by criminal justice agencies and going without further investigation and/or prosecution. Of serious concern were further incidences of harassment when a Hispanic staff raised the question of discrimination not only in hiring but also of promotions and assignments.

The final paper was given by Monica Herrera Smith on re-entry support systems for the Hispanic inmate. The major issue was the acceptance by corrections of its responsibility to provide quality, in depth re-entry services to inmates in general and Hispanic inmates in particular. As Hispanics by their numbers of the prison population are underrepresented in vocation/educational re-entry programs.

A second issue raised was the utilization of "outside" agencies and/or organizations to assist the institution prepare the inmate for a successful re-entry. A prime need addressed was the job preparation programming of the institution. The stress was that as the labor market needs change the outside agencies can give any institutional program updated information and thereby assistance to the inmate. As Hispanic community organizations for re-entry, training and/or education are created with knowledge of the Hispanic community and the tools the Hispanic inmate needs to re-enter his/her community, so therefore these organizations should be supported and utilized by the correctional system.

The recommendations also focus on pre-release programs and their potential for positive results. The discussion again was centered on the need for the Hispanic inmate to be given the opportunity to equitably participate in the programs, and services that would ensure his/her a better opportunity to successfully re-enter the community. The concern was that all too often the Hispanic inmate is denied equal access. Some contributing may be language proficiency, educational competency, and recommendation by correctional staff based on evaluation of behavior and motivation. These negatively affect the opportunity of Hispanics when language and culture differences are not considered.

As the workshop was structured to use the presentations as focal points of discussion the recommendations following each paper speak specifically to those issues. And as there arose from the dialogue general levels of analysis (services to inmates, staffing of institutions and correctional policy input by Hispanics) there were several concerns that emerged that crossed the levels and varied issue papers. These overall concerns are:

- Need for Hispanic representation at policymaking levels of the criminal justice system
- Need for true aggressive affirmative action in the employment of personnel throughout the criminal justice system
- Need for services to inmates that are sensitive and responsive to the particular needs of incarcerated Hispanics, i.e., language, bicultural treatment modalities, aptitude and psychological testing

- Need to integrate community resources/groups into the treatment/ program of Hispanic inmates
- Need for equitable accessability of inmates in relationship to education, job training
- Need to form a national network among Hispanics in the field of corrections
- Need to openly address the concerns regarding discrimination against Hispanics in the criminal Justice system
- Need to combat this discrimination through investigation and prosecution of those persons and agencies who are found to be discriminating

The workshop members felt that this was a beginning and that there still was the challenge of bringing this work to fruition and whether the criminal justice system truly becomes "just" for Hispanics. The members voiced their willingness to continue their work to this end.

CORRECTIONS WORKSHOP

A. RECOMMENDATIONS - Psychological Testing

A. Testing Conditions

1. The Department of Corrections should develop policy in the following areas:

a) Inmates, ward and staff should be trained about the nature, uses, limits, and implications of the test.

b) Spanish-speaking examiners or certified translators should be available during testing procedures for limited English Hispanics.

c) Instead of tradiitonal psychological testing alternative methods for determining program needs for Hispanics should be developed.

d) Psychologists working in the correctional field should be given training regarding affective and cognitive styles, cultural differences, needs, and the like of the poor and of Hispanics.

2. The American Psychological Association should develop policy regarding the education of psychology graduate students around the issues of Hispanics.

B. Test Results

1. The National Institute of Mental Health should advocate and fund efforts to develop valid psychological tests for Hispanics.

2. The Department of Corrections should ensure that the American Psychological Association guidelines for testing should be followed.

3. The Department of Corrections should monitor and prevent inappropriate use of psychological testing as specified by American Psychological Association guidelines.

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4. The Department of Corrections should recognize that the mere translation of psychological tests does not render them valid for Hispanic populations because they are not standardized.

5. The National Institute of Mental Health and the Department of Justice should locate funds for scholarships to support bilingual Hispanic graduate students in mental health fields. Preference should be granted to persons who have demonstrated rapport with offenders and who are community oriented.

6. The Department of Corrections should follow the guidelines of the American Correctional Association for the number of psychologists it needs and should fill these positions with bilingual Hispanic psychologists.

7. The Department of Corrections should uphold professional standards and enforce the code of ethics for psychologists regarding the confidentiality of test results with regards to inappropriate access to and use of test results by inappropriate staff.

8. In keeping with American Psychological Association guidelines the Department of Corrections should ensure that inmates and wards receive proper preparation and feedback regarding psychological testing.

C. Needs

1. The Department of Corrections should ensure that psychological tools appropriate for Hispanics are used to determine retardation and that re-evaluation of mental retardation is done at appropriate intervals.

2. The Hispanic Caucus of Congress and each State should pass laws regarding the appropriate uses of the psychological testing of

Hispanics in general and the psychological testing of incarcerated Hispanics in particular so as to ensure that American Psychological Association guidelines regarding psychological testing are followed.

3. The National Hispanic Conference on Law Enforcement and Criminal Justice should organize and seek funding for a national multi-disciplinary task force among the tasks of which would be the following:

a) Locate funding to maintain itself.

b) Maintain communication with the various departments and agencies regarding the recommendations of the Conference.

c) Study existing laws that may relate to the rights of inmates as they relate to the problems of psychological testing.

d) Keep abreast of the legal test cases regarding psychological testing as they are being litigated.

e) Introduce legislation or legal test cases as the hard data is produced.

f) Impact the departments and agencies regarding policy development as hard data (see below) and laws are developed.

g) Form coalitions with other ethnic minorities wherever feasible and expedient.

h) Recruit the interest, expertise, and lobbying powers of other organizations and persons.

i) Identify and recruit Hispanic psychologists and develop the psychology task force among the tasks of which would be the following:

i) Identify and recruit Hispanic psychologist to carry out the various functions of the psychology task force.

ii) Develop a literature review regarding psychological testing of Hispanics, including incarcerated Hispanics.

iii) Produce and publish hard data regarding the psychological testing of Hispanics, including incarcerated Hispanics.

iv) Development new assessment methods including tests and alternative methods for assessing intellectual and emotional functioning.

v) Maintain communication with the National Task Force.

vi) Establish guidelines for Forensic Psychology/Psychiatry specific to incarcerated Hispanics emphasizing the professional responsibility to avoid inappropriate labeling and possibly harmful unsubstantiated inferences

vii) Identify and advocate specially needed research in the area of psychological testing of incarcerated Hispanics.

4. Whereas, psychological testing has been culturally biased it has also been sexually biased in that the measure of sex differences in personality or ability is merely the measure of conformity or lack of conformity to the established male norm. Therefore, it is recommended that the National Institute of Mental Health fund research to identify the sexual bias of psychological testing and to modify psychological testing in terms of women in general and Hispanic women in particular.

CORRECTIONS WORKSHOP

CONCLUSIONS

The following are conclusions as derived from the discussion of the psychological testing of incarcerated Hispanics:

A. Testing Conditions

1. Translating assistance is not available during testing.
2. Inmates and wards are uninformed about the implications of the tests.
3. Inmates and wards are not experienced in pencil-paper tests.
4. Testing leads to poor programming for Hispanics.
5. Many psychologists are insensitive to Hispanic experience, effective and cognitive styles, and cultural differences.

B. Test Results

1. Psychological tests are invalid for Hispanics because they are culturally biased and are standardized on a white middle class population.
2. A disproportionate number of Hispanics score in the psychotic ranges of personality tests.
3. Intelligence tests render gross misrepresentations of the innate ability of Hispanics.
4. Intelligence tests are achievement tests regarding cultural conformity and consensual cultural knowledge.
5. The mere translations of psychological tests does not render them valid for Hispanic populations because they are not standardized.
6. The ethnicity of the examiner has a marked effect on the test results.
7. The excessive availability of psychological records to jailhouse

personnel is unethical and unjust.

8. The ethical code for professional psychologists is not enforced regarding the confidentiality of test results.

9. Inmates and wards are not given preparation for testing, test results, or rationale for treatment.

C. Needs

1. There is a need to protect the rights of inmates who are removed from the general population due to a diagnosis of mental retardation and who are placed in special treatment units.

2. There is a need for innovative research that does not support stereotypes and that documents the invalidity of psychological testing for Hispanics and incarcerated Hispanics.

3. There is a need for the development of relevant personality and intelligence tests for Hispanics.

4. There is a need for legislation and policy development regarding the psychological testing of Hispanics in general and the psychological testing of incarcerated Hispanics in particular.

B. Recommendations - Bilingual Programming

Recommendation #1 - Educational Programs

A. Each State should hire a bilingual educational coordinator, to work out of the system's central office, coordinating the activities of the bilingual educational staff throughout the State. That individual should also work on curriculum development and periodically monitor and evaluate the quality and quantity of bilingual instruction given throughout the system.

B. A varied educational package should be offered in institutions where a significant number of Hispanics are confined or where a large portion of that number are English handicapped. The emphasis should not be just on more classes or instructors but better trained bilingual teachers and better and more ample bilingual teaching materials, both printed and audiovisual.*

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* The New York State Senate (& Assembly) passed a bill on March 20, 1980, amending the Correction Law to read as follows: "Bilingual and bicultural academic instruction required. In every facility, all academic programs and courses for inmates with limited English speaking ability should be delivered in the dominant language of the inmates in addition to English, when such facility has an inmate population of 300 or more and in which 10% of the population comes from a single cultural and language group and has limited English-speaking abilities." (The Bill---S. 8386--was vetoed by Gov. Hugh Carey but will be reintroduced in the next legislative term. It was spearheaded by the seven members of the New York State legislature: Assemblymen Montano, Serrano,

C. Funds should be provided to alien inmates to pursue high school educational programs similar to those offered other inmates who may be able to avail themselves of TAP, VA or other funding sources.

Recommendation #2 - Personnel

A. Affirmative Action and Equal Employment Opportunity policies must be rigidly pursued which will result in the hiring of more Hispanic or Spanish-speaking personnel.

B. Hispanic custodial personnel should be assigned to posts and given hourly schedules which will permit them maximum contact with Hispanic inmates.

C. Spanish-speaking personnel should be offered promotional opportunities (similar to other employees) and, where practical, permanent Civil Service Status.**

D. Spanish-speaking personnel should be encouraged to relocate to rural areas where large facilities are located. Where necessary assistance should be rendered in housing, educational assistance for children

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Nine, Robles and Del Toro and Seantors Ruiz and Mendez.)

** Too often the majority of Hispanic civilian personnel are hired on Federal grants and/or on provisional basis and are the first to be dropped when that funding source ends. Wherever feasible, systems should try to keep these people by transferring these jobs to State or municipally funded budgetary items.

and community acceptance. For those preferring to commute long distances, consideration should be given for transportation subsidies and convenient work schedules.

E. Personnel should work closely with Civil Service, Budget, the Unions and other concerned agencies to evaluate current Civil Service examination and recruiting procedures. All job titles should be periodically screeened to ascertain whether or not they qualify for spanish-speaking parenthetics. This also applies to higher level positions.

Recommendation #3 - Staff Training

A. Programs should be established to indoctrinate non-Hispanic or non-Spanish speaking staff regarding Hispanic cultural, language and ethnicity. Occasional visits to urban areas or meetings with other criminal justice professionals who deal primarily with Hispanic offenders would be helpful.

B. Spanish-as-a-second-language courses should be offered staff by institutions, or at local high schools and community colleges with the State or municipality picking up the tuition costs.

C. In-service training courses as well as entry level courses for new custodial recruits should include topics on Hispanic issues and Hispanic inmates. If possible an Hispanic staff member should be assigned to the training complex.

D. Outsiders, either from schools or related agencies should be periodically invited to lecture staff on current Hispanic topics which may impact on institutional relations between staff and inmates.

Recommendation #4 - Discriminatory Practices (Staff)

A. Commissioners should closely monitor and take personal responsibility for situations in which discriminatory practices are alleged by minority staff members.

B. Internal disciplinary mechanisms, in conjunction with local Civil Service and Labor Relation policies, should be enforced to ensure compliance.

C. An internal grievance procedure should be utilized--at the institutional, regional or central office levels--to quickly resolve allegations of discrimination to the satisfaction of all parties concerned.

C. RECOMMENDATIONS - Underutilization of Hispanics as Staff

1. Criminal Justice Agencies should strive to upgrade the level of professionalism. Within this process criminal justice agencies must offer an avenue for the recruitment, retention and advancement of qualified Hispanics. Affirmative action programs must be immediately implemented to correct the severe underutilization of Hispanics in all criminal justice agencies. A system of horizontal/lateral transfers should be a part of any affirmative action programs.

2. A system of ongoing evaluation of personnel should be established. These periodic evaluations should note progress and growth not only on the job, but also community involvement, community leadership and academic accomplishments. In this manner, each professional's progress would be monitored and professional growth could be nurtured throughout their career.

3. Criminal Justice Agencies have had relatively little success in training non-Spanish speaking personnel to speak Spanish. Incentives are needed to encourage such study. This could be accomplished by offering extra pay for bilingual proficiency and Conversational Spanish courses as well as cultural sensitivity courses to personnel with time off from regular duties to attend such courses.

4. Extra score points ranging from 5 points to 10 points should be granted in Civil Service Examinations to those individuals with bilingual skills.

5. Each agency should develop the capability to continually monitor the progress of personnel beginning at the entry level. Frequently

personnel are recruited into the system as high school graduates and on their own initiative complete college educations during their off-duty hours. Such accomplishments should be noted and acknowledged with a personal letter of congratulations from the commissioner in charge of the agency. Such accomplishments should also count heavily in granting promotions. If promotions are granted on the basis of competitive Civil Service exams, such accomplishments should be rewarded by granting extra grade points in the exam.

6. The Ethnic identity of every offender should be noted on all documents that are utilized to compile criminal justice statistics.

7. Any criminal justice agency and employer alleged to carry out practices or demonstrate patterns of racial discrimination in employment or otherwise denying Hispanics their civil rights should strenuously be investigated by the Attorney General and if found guilty prosecuted and sentenced for civil rights abridgment. Further, any criminal justice agency or personnel conspiring to threaten or coerce Hispanics should likewise be investigated and immediate legal action taken.

D. - Corrections: Re-entry and Supportive Services for Hispanic Offenders

1. Relevancy of prison vocational education and prison industries
    A. Identify the following:
        1. What skills are being taught and levels of proficiency
        2. What are the needs of industry
            a. comparable skill training
            b. upcoming industry needs
            c. use National Alliance of Business (NAB), Employment Development Service (EDS), Private Industry Council (PIC) and Labor
        3. What is blocking progress and/or change within institutions
    B. Proposed Recommendations
        1. Increase multi-jurisdictional cooperation of government agencies
            a. utilize resources of State Employment Agencies and Education Institutions
        2. Develop statewide Trade Advisory Councils (TAC) for each level of corrections
            a. identify State Industries Commission purpose, possible tie in or nucleus of TAC
        3. Involve industry directly in vocational education process
            a. on-site visits to institutions to determine relevancy
2. Work Release Programs
    A. Provide incentives to inmates to train
        1. Develop participation criteria i.e., inmate participation in vocational education, prison industries, academic, within institution work history, stability

B. Increase number of halfway houses

1. Privately run

2. Consistent funding (state, federal)

3. Ex-offender as a non-target group

A. Identify non-traditional sources of funding i.e., Department of Energy, etc.

B. Education/Awareness of funding sources as to needs

C. Recommendation to funding sources on CBO's

1. Does the need exist

2. Is it a duplicate service

3. Insist upon coordinated efforts of CBO

D. Utilize central point of information statewide, i.e., (CIRS) Correctional Information and Resource Service

4. Job Service Providers

A. Establish standards for CBO's

B. Provide technical assistance to CBO's

C. Insist upon CBO consortium

D. Act as advisors to CBO consortium

E. Cross-liaison with consortium

F. Utilize National Alliance of Businessmen and other existing coordinators of service

5. Financial Inadequacies

A. Identify resources to provide services

B. Identify need and present to funding sources

C. Pressure agencies that can provide resources, i.e., (DVR) Department of Vocational Rehabilitation

D. Proceed with credit union concept

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6. Jobs

   A. Assist in public and employer awareness by working with major employment generating services

      1. CETA prime sponsors

      2. Employment Service

      3. National Association of Businessmen

   B. Provide technical assistance to above

   C. Encourage corrections to seek funds from (DOL) Department of Labor for employment programs

7. Woman Offenders

   A. That specific re-entry services incorporating CBO's be developed for female Hispanic Offenders

      1. Incorporate bicultural family and personal counseling

      2. Develop specific re-entry community contacts

   B. That Halfway Houses be developed that will include a family reintegration for Hispanic women with children

   C. Whenever possible alternatives to incarceration be sought for women with dependent children in order to maintain family continuity

   D. As Hispanic women have low ed. and job skills that priority be given on the basis of need for the services within the institutions in order to increase the potential for a sucessful re-entry

In addition to the preceding, it is recommended that:

   A. Criminal Justice Agencies provide culturally relevant socialization, job preparation and re-entry services

   B. Increase Hispanic staffing and bilingual institutional programs to better serve Hispanic inmates

   C. Research be conducted by CJS to identify the specific needs and areas of concentration

D. The Department of Justice and all other governmental agencies should compile accurate statistics reflecting the presence of Hispanic inmates/staff

E. That Hispanic inmates be provided appropriate "opportunities" of re-entry and support programs within the institutions

E. - Recommendations of General Concern

1. The goal of this conference should be the development of a National Criminal Justice Hispanic organization whose purpose would be to address the issues, concerns and problems that affect the Hispanic community throughout the country.

The functions of this organization will focus on:

- Research, and program development that will help to improve the conditions of Hispanics
- Develop a network among local, state and federal institutions of the criminal justice system with CBO's and other agencies
- Monitor/develop legislation that affects Hispanics and other minorities
- Exercise judicial action and review of issues such as Hispanic inmate appeal rights, Hispanic staff recruitment and promotion and all issues relating to affirmative action Where there is discrimination and resistance to this organization will advocate class action suits
- Establish a clearinghouse to disseminate information and research to all state groups

2. It is recommended that states with significant Hispanic populations establish statewide Hispanic Advisory Groups that will oversee all policies developed that affect Hispanics. These groups will also provide policy input to governmental institutions on state, local and federal levels. The National Hispanic Criminal Justice organization will provide the coordinating linkage mechanism to the state groups.

3. It is recommended that the American Correctional Association establish a Hispanic committee to overview accreditation standards to ensure they are responsive to Hispanic needs. Further that this committee identify Hispanics who would provide technical assistance to those agencies found to be needing assistance to meet these standards

4. Resolved, that this Conference urge the American Correctional Association, the National Sheriff's Association and the International Association of Police Chiefs to adopt standards recommendation to their affiliate members providing for Bilingual Services to non-English speaking individuals in their custody.

5. Resolved, that this Congress will recommend to the Hispanic Congressional Caucus to initiate Federal legislation which would mandate availability of Federal funds for bilingual programs for adult inmates throughout the country.

6. Resolved, that this Conference recommend that every State should conduct an inmate survey to identify Hispanic inmates in their system, with a breakdown of their educational status and their ability to read, write or speak fluent English and/or Spanish and to make their findings periodically available to program staff and funding sources in order to complete a needs assesment in relation to services to be offered those inmates

7. It is recommended that each state with a significant Hispanic population have a Hispanic within the State Attorney General's Office in policy/legal positions

8. Recommend that a committee be established to assess the impact of the resurgence of collective violence by groups such as the Ku Klux Klan, Nazi's and other groups who through overt or covert activities present a clear and present danger to the life and welfare of Hispanics

F. Recommendations - From the General Assembly

1. That special programs - educational, cultural, recreational and religious be established, on a permanent basis, for Hispanic inmates. And that Hispanic experts be assigned to conduct and to supervise those programs.

2. That all delinquent Hispanic children be released to the care of their own families on their own recognizance until the time of the trial is set.

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POLICE WORKSHOP

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* * * * *

"THE USE OF PHYSICAL FORCE BY POLICE -- A PERENNIAL CHICANO COMMUNITY DILEMMA"

Presented by:

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"POLICE ABUSE AND POLITICAL SPYING: A THREAT TO HISPANIC LIBERTY AND GROWTH"

Presented by:

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THE USE OF PHYSICAL FORCE BY POLICE -- A PERENNIAL CHICANO COMMUNITY DILEMMA

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Prepared for:

National Hispanic Conference
on
Law Enforcement and Criminal Justice

The Shoreham Hotel
Washington, D.C.
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INTRODUCTION

A look at how law enforcement interacts with the citizens in the Chicano communities throughout the Southwest should be most important to us, because the police, as visible as they are, are perceived as "front-line" government. As a matter of fact, they do represent government. They represent its attitudes and policies - good or bad. All considered, the police do play a strong role in enforcing and reinforcing those norms of systems by which we are expected to live. The following inspection deals with one part of the interaction.

In 1846, President James K. Polk ordered the highest law enforcement agency of the land to "defend and protect" American citizens and interest in the Southwest by invading Mexico. Since then, Chicanos have been confronted with acts of official abuse condoned under the color of the law. The notorious Texas Rangers assisted non-Mexican Americans to amass great land holdings at the expense of Hispanics. As recently as the early twentieth century, local, state and federal law enforcement agencies were helping the southwest mining interests to perpetuate slave-like working conditions for Chicanos. The "Ludlow Massacre" illustrated what could happen if miners struck for improved working conditions:

> At 10 a.m., state militiamen and company guards began shooting directly at the tents and setting them on fire. Of the 18 people killed, half were Chicanos.[1]

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In California, as in the rest of the Southwest, law enforcement has been known to protect agri-business and has even, ostensibly, protected our morals. The 1933 cotton workers' strke in the San Joaquin Valley and the pecan pickers' strike of 1938 in San Antonio are two examples where policemen were involved as strike breakers against mostly Chicano strikers. The Zoot Suit riots of 1943 occurred amongst cries from some media and public officials for violence by servicemen (Chicago youth and servicemen had been involved in some fighting before the riots). The Los Angeles Herald Express, dated June 5, 1943, remarked:

> Two hundred Navy men sailed up the Los Angeles River early today and in a task force of taxicabs launched a reprisal attack on Zoot Suit gangsters in East Los Angeles.[2]

Time magazine added:

> The LAPD practice was to accompany the caravans in police cars, watch the beatings and jail the victims.[3]

Roger Jessup, Los Angeles County Supervisor, said:

> . . . all that is needed is more of the same kind of action being exercised by the servicemen. If this continues, zooters will soon be as scarce as hen's teeth.[4]

During the Vietman Moratorium March of 1970, in Los Angeles, scores of Chicanos were hurt. Three were killed, including Ruben Salazar, a journalist of keen vision, by a combination of several Los Angeles County law enforcement personnel. A persisting assumption of many in the East Los Angeles County Chicano community, to date, is that we were treated by law enforcement as if we were unable to determine right or wrong. Whatever the case, a great number of persons have died or have been injured as a result of our being "served and protected." Who is to say that these law enforcement endeavors have not also sanctioned other violence on Chicanos by persons who view these acts as license to do likewise?

Law enforcement has played a significant role in the shaping and reinforcing of the many negative stereotypes and attitudes applied to Chicanos by those in the majority. Chief of Police William H. Parker, police chief of a large, western metropolitan police force, was quoted thusly when he appeared before the U.S. Commission on Civil Rights:

> . . . Some of these people (Mexican Americans and Latin Americans) have been here before we were but some of them are not far removed from the wild tribes of Mexico.[5]

Thus, to many non-Latinos, even the use of excessive force by police in our communities is viewed as a necessary tool for maintaining order. For Chicanos, an atmosphere of ill will and mistrust hovers over the many attempts at working and cooperating with the police. Mr. Gilbert Pompa, Director of the Community Relations Service of the U.S. Department of Justice, emphasized the present tenor of the problem when he stated:

> I believe that the anger, frustration and distrust existing between police and minorities were and are vital contributors to this undeclared war . . .

> (minority youth) generally see the police as representing everything that is socially and institutionally denied them.[6]

During the last twenty years, particularly in the last five, there has been a large growth in the demands by Chicanos to have their civil rights enforced by states and the nation. There have been great strides made at the legislative and judicial levels of government. These gains have simply reinforced the concept of equal rights, at least on the dockets. However, what appears on the books and what is actually enforced marks the difference where progress is concerned. In the Chicano communities, these words, unless accompanied by action, are meaningless.

In the last few years, reported police abuse incidents in the Southwest have increased. Of special concern to law enforcement officials is the growing sophistication with which community and legal action groups have documented and prosecuted these cases. The Mexican American Legal Defense and Educational Fund, alone, has reported to the U.S. Department of Justice more than fifty-six cases of police brutality, most having occurred in the Southwest. Still, these cases of police-caused homicides and beatings have been treated lightly and, if prosecuted, have resulted in few convictions and little or no punishment for those policemen involved.

To most Chicanos, this pattern of unchecked brutality on one hand, and unaccountable illegal behavior on the other, cannot continue.

According to Nation reporter, Tom Miller:

> It is a situation with striking parallels to the civil rights movement of a decade ago, and strong action will be needed from federal authorities, influential and sentitive community leaders, aggressive lawyers, and an awakened public before random violence against Latinos is stopped in the Southwest. It won't be an easy victory, and it won't come soon.[7]

Considering all of the obstacles before us in our attempt at working with law enforcement to quell the rising problems, the questions which we must consider are: Where do we start, and who is to start it? We must also establish what it is we want from law enforcement; law enforcement must ask what it wants from us.

POLICE BRUTALITY

Most Chicanos and police have not always agreed on what is proper police practice. Likewise, criteria for what is brutal and for what is proper are subjective and merely descriptive of what took place, rather than a description of what police do. Yet, the perception of what Chicanos view as either proper or brutal is as important, if not more so, than the practice itself.

Mr. Gilbert Pompa recently testified that:

> No single issue will lead to serious community disruption as allegations or perceptions of the use of excessive force by police . . . one single charge of excessive use of force against a police department has the capability of snowballing into an avalanche of problems that may include a vicious cycle of police and citizen killings; a decrease in public confidence in, not only the police, but the entire city and even state administrations; and a decline in citizen cooperation with police, greatly hampering the ability of the police to do their job.[8]

What Chicanos object to and call police brutality is the judgement that police have not treated them with the full rights and dignity guaranteed them by the constitution as members of this free country. Any practice, police or otherwise, which degrades a people's status as human beings, restricts their freedom, harasses them, or uses unnecessary force against them is brutal and should therefore be subject to the closest public scrutiny and control. According to recent comments of Loyola University Law School Professor, Gerald F. Uelman:

> Police can no longer investigate or police themselves. There has to be an outside scrutinizing body to do so.[9]

Professor Uelman is not advocating citizen review offices or boards. He does, however, prefer a reviewing and enforcing body at a high level of government.

Historically, police have tended to behave in an offensive and oppressive manner when dealing with those persons they consider as lower in class than they. When race and ethnicity are additional factors, the problem is compounded. Common approaches by officers in such situations are:

1. the use of abusive and threatening language
2. unreasonable orders for some action
3. field interrogations and filmings, or indiscriminate searches of persons or personal property
4. physical intimidation
5. inappropriate use of disabling paraphenalia
6. use of deadly force.

Use of Abusive and Threatening Language

The language factor is an important one, not because of what is actually said but what was intended to be perceived. There is a difference in the message conveyed when a police officer states, using the all too familiar intonations and non-verbal language, "I busted that Mexican," and one where an officer might say, "The guy I busted was a Mexican American." Chicanos have been targets of profanities and degrading terms: spics, greasers, and a------s. "Move and I'll blow your f---ing head off," is a common chastisement used by police in commanding Chicano suspects. Young Chicanos are particular targets of such harrassment, especially if the police perceive them as non-conformists. Present day Low Riders fall in this category.

Unreasonable Orders for Some Action and the Use of Field Interrogation and Filmings

It is extremely important for police officers to be in complete control when investigating incidents or when effecting arrests. But at what point do such actions cease being "aggressive crime prevention" and become, simply, harassment?

The dispersing of social, street assemblages of youth, the constant stopping and checking for identification or vehicle code violations without good reason, are clear forms of harassment and restriction of persons' rights to move freely, as are the taking into custody, and the detaining and photographing of youth when no crime has been committed. Recently, some Chicano youths in the Los Angeles area were stopped, detained, and photographed by the Los Angeles Police simply because the police happened to notice them. It was not until the police were enjoined, through a suit by the American Civil Liberties Union which claimed:

> . . . the stopping of the youth suspected of being gang members amounted to unconstitutional search and seizure,

> invasion of privacy, and 'invidious discrimination based on race and privacy' . . .[10]

Although the judge did not agree on the race and poverty issue, the activity was stopped. Police were allowed to photograph, but only with the permission of the intended subject. Another point of concern which is concommitant to the above is the searching of individuals unnecessarily and without proper authorization. Despite the constitution's Fourth Amendment's directive, with few exceptions, that policy obtain a judge-signed warrant before searching, we are still confronted with the problem of too many overzealous officers violating it. The late Supreme Court Justice Louis J. Brandels stated:

> If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.[11]

In too many instances we have seen where although perhaps wrongly, citizens have decided to physically resist what they perceive as a violation of their Fourth Amendment rights by police.

Physical Intimidation and Inappropriate Use of Disabling Paraphenalia

The fact that the appearance of police in uniform - their physical size, numbers, training, equipment, and support - is a crime deterrent, is good. The fact that the police can likewise use these attributes unnecessarily and to degrade, can only serve to intensify resentment towards them. There are numerous accounts of incidents where police are accused of escalating what should have been a simple identification check into a violent and unnecessary arrest. An article by Angel Fernandez recounts:

> . . . (the policeman) comes up and says, 'Give me your ID, boy.' I said, 'I ain't no boy.' . . . he was trying to pick a fight so we got in an argument . . . he starts hitting me in the chest with his finger . . . and I knocked his hand out of the way . . . an assisting officer grabbed (the subject) and several policemen pulled up . . . there were four or five holding me . . . (officer) Mize is hitting me with his flashlight . . . case is now pending in Fremont Municipal Court for resisting arrest and battery on Union City police officer Mize.[12]

This article also reported the officer's account, citing that the alleged victim of the police action interfered with the officer, thrust a finger at the officer's chest and struck him with his other hand, and resisted arrest.

Use of Deadly Force

The hub of the police brutality issue lies in the use of excessive force, the ultimate being deadly force. Although every state in this nation allows the use of any amount of force necessary to effect an arrest or, in general, to maintain public order, they have somehow failed to precisely delineate the amount of force policemen can properly use. In the case of the use of deadly force, although in most states it is limited by law, "twelve states have no justification statutes limiting an officer's use of deadly force."[13] The limitations are not clearly defined and are not uniform nationwide. According to a Community Relations Service publication:

> Nonconformity is evident. Some states follow the common law approach; others follow the forcible felony rule; others the model penal code approach; while others have no state justification at all on deadly force.[14]

California uses the Model Firearms Policy which was adopted by the California Peace Officers Association on May 20, 1975. Prior to its adoption, Attorney General Younger charged that:

> diversity in shooting policies is a serious problem to California law enforcement.[15]

This diversity in shooting policies in California remains, though there is this model. A further complicating problem is the hundreds of law enforcement agencies in the state, each with its own policy, or lack of it. In Los Angeles County alone, there are some fifty law enforcement units, each approaching the Model Firearms Policy according to each chief's attitude and philosophy. Considering the various personalities involved and the discretionary lattitude allowed in shootings, it is almost impossible to expect that there is going to be a uniform adherence to any policy.

According to Brownlee Haydon, Director of the Los Angeles Police Project, in 1979, of the forty-seven reported police-induced homicides, fourteen were Latinos; of the forty-seven wounded by police gunfire, twenty-two were Latinos; in twenty police hot pursuits, one Latino died and two were injured; and of other causes of death attributable to restraint holds (bar-arm and cartoid) or beatings, two Latinos where killed and one was injured. These deaths and injuries occurred in and around Los Angeles. They involved smaller police departments, the Los Angeles County Sheriffs Department, and the California Highway Patrol.

Excessive force problems do not always occur on the streets during the heat-of-the-moment situations. They occur in police stations and jails where the constitutional rights of a suspect are least protected. They occur during interrogations, when the suspect is uncooperative, when there is a carry-over of an affront by an arrestee on an officer in the field; or when an offender attacks an officer. One reported situation occurred in the jair of the City of San Fernando, California, where two Chicano suspects were severely beaten after being arrested for disturbing the peace. One officer beat the two while the Acting Chief of Police looked on.

Why one officer hit the suspects while the supervisor condoned the action is left to conjecture. This department must have surely forbidden such activity through its written policy. A question obviously arises about these policies and their ability to be enforced. The underlying problem is that these violations of policy occur with the seeming approval and, a later defense of it, by police officers. Police officers, it seems, are protected by their superiors and police associations from any official or outside scrutiny of their actions. This brotherhood or culture of police indicates that there may be an officially appropriate way for responding to a given situation, but there is also a P.O.A. - preferred, and therefore, a better way of doing things. According to Bruce Cory:

> . . . in January, 1975, Police Chief Murphy issued a revised firearms policy far more restrictive than the 1972 order . . . the San Jose Peace Officers Association saw matters differently . . . sued in state court to enjoin enforcement of the firearms order . . . the court issued a temporary restraining order against the new firearms policy . . . Murphy withdrew the policy and reinstituted the old order . . . . In March, 1978, an appeals court ruling struck down the injunction against the 1975 firearms order. . . . McNamara (new police chief) agreed that he plans no revision in the firearms policy . . . he doesn't want to jeopardize the still-new mood of cooperation between his office and the P.O.A. [16]

Mr. Cory did not intend to imply that either chief was wrong or weak. He merely indicated that the P.O.A. is a powerful body of organized policemen capable of using that power to protect what it considers to be in its members' interests. In fact, since taking over the San Jose Police Department in 1976, Chief McNamara has not only been successful in steadily improving the Department's community approach, but has likewise improved relations between the P.O.A. and his office. Police and community leaders have attested that it had to take a strong administrator and a community-sensitive person to be able to do this in a city which at one time was on the brink of explosive deterioration of police-community relations, because of police brutality issues. The rank and file policemen had also been at odds with their chiefs because of reforms each had implemented.

Of course, all is not perfect, but as is happening in San Jose today, there has to be a continuing and all-encompassing effort to remedy the long-standing, police-community problems which exist in our communities nationwide. The police agency administrators and line officers, community organizations and leaders, and the educational and religious institutions must be involved; the business groups should play an active role; and, last but most important, the mass media - those elements of news, entertainment, public service and advertising - must be influenced to play a strong role in resolving these problems. The media must reverse the negative stereotyping and the sensationalizing of issues. They must assist in a manner that extends beyond objective content and timely dissemination.

RECOMMENDATIONS

There is no magic key to solving police-community problems, particularly those linked with the use of physical force, since the law itself permits police officers to use such force in certain arrests. At times such force may be necessary, although it does compound the problem. Deadly force by police, without a doubt, precipitates the severest and most complex of problems in any community. Thus, in determining what course to follow in resolving physical force problems, we should begin with the deadly force issue and proceed from there.

- We should continue to press aggressively for changes in national, state and local laws which protect our civil rights, so that they protect all peoples' civil rights.

- We should exhort national and state legislators to create such federal and state units which would develop, employ, control and enforce a uniform shooting and other physical force policies.

- We should continue to advocate for changes of such practices of individual police departments which contribute to the precipitation of tensions and distrust in our communities.

- We should vigorously demand local, citizen grievance procedures and police accountability.

- We should insist on maintaining recourse to the federal government for situations where local investigations of and other attention to cases of police using excessive force are inadequate.

- We should persist in our demands that our police officers be trained as well in the humane aspects of law enforcement, as in the technical and military ones.

- We should strongly urge that the National Institute of Occupational Safety and Health place the problem of police occupational stress at its highest priority level for remedial action.

- We should stimulate the study of present police services to determine how the following can best occur within public safety considerations:

  1. provide law enforcement services
  2. provide other public, but law enforcement related services
  3. provide for the development of equally weighted public service agencies excerpted from present-day law enforcement services, so as to improve delivery of such services and so as to allow regenerating mobility for policemen.

- We must continue to organize such groups which promote and provide assistance to police agencies in community survival issues.

- We should play an active part in voluntary and appointive governmental bodies, such as police commissions, qualifications appraisal boards, and investigative task forces to provide decision-making input to government.

- We must develop, promote and assist organizations of Hispanic practitioners of the administration of justice.

- We must increase our efforts at organizing, registering, educating and motivating our people to participate in the electoral process.

- We must prepare ourselves and actively compete for all levels of public office.

Submitted by

Angel M. Alderete

FOOTNOTES

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POLICE ABUSE AND POLITICAL SPYING: A THREAT TO HISPANIC LIBERTY AND GROWTH

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INTRODUCTION

In presenting this paper to the National Hispanic Conference on Law Enforcement and Criminal Justice, and to the Law Enforcement Assistance Administration, it may be difficult to adequately address the simple phenomenon known as "police abuse". The relationship between police as friend and police as foe must be understood within the framework of the causes of crime, and the concrete historical conditions in the economic development of this society.

LEAA has been involved in, and was basically developed to fight against, the causes of crime. This mandate arose out of a narrow and shallow view of the causes of crime. The response, which prevails today, was to flood society with more and better equipped police - putting a cop on every corner, militarization, and increased technology.

Crime is not only caused by economic policies which result in direct suffering for millions of people, but also by individualistic, competitive, and cynical values which are endemic to this society. Modern North America is characterized by historical patterns of racism in an economy which emphasizes high profits at the expense of people's needs and which develops, for a large part of this society, alienation and insecurity from a tedious work place, under-employment, unemployment, dead-end jobs, and job instability. Divisively pitting people against each other for scarce jobs by purposefully funding education at increasingly lower levels, Hispanics through the United States became victimized, first by the racism from both the people in the labor market competing for available work and by business interests who profit by keeping people non-unionized and divided.

It is the firm belief of this writer that crime is not innate in a society, just as it is not innate in any racial group. It is without doubt that Hispanics and other racial minorities not only commit a disproportionate amount of the street crime, they are also the victims of street crimes at a disproportionate rate. Further, it is without doubt that crime is directly related to factors of poor education, unemployment, alcoholism, and drug trafficking. As a people, Hispanics throughout the United States are disproportionately victims of those crimes which the society tolerates. To deal with crime, as LEAA has done in the past, by strengthening the police with numbers and arms, is to accept the inevitability of crime and the permanence of the social system which breeds it.

While LEAA, Hispanics, Blacks, or most people for that matter, really are powerless to deal directly with these phenomena, they must be taken into consideration in order to fully recognize the limitations of the suggestions and recommendations that are made in this paper. From this paper, it can be seen that Hispanics have to fight against police abuse concurrently with a struggle for the right to a decent standard of living and to exercise our constitutional freedom.

In the first portion of this paper recommendations for the police violence involving deadly force will be presented. While the supporting history and analysis provides some understanding of the problem, it is submitted that police violence against citizens will best be understood after a reading of the second portion dealing with political espionage and the use of infiltration and agent provocateurs agains Hispanic efforts to fight for social and political equality. We are not the first to be subject to the power of police repression in the United States. However, it is clear that the essential function of the police is to control and limit the social and economic growth of Hispanics, Blacks and poor people in the United States. Under the guise of maintaining "law and order" and using racism to characterize Hispanics and other minorities as inferior and violence prone, the dominant society has allowed the police and their function to be mystified so that the social control and political activities of the police are disguised and left uncontrolled.

There is a serious police threat to the Hispanic liberty and the political growth of Hispanics in the United States. The recommendations that follow are submitted with the hope that participants to this conference can address the issue in a way that will reflect the whole iceberg and not just the tip.

SUMMARY

OF

RECOMMENDATIONS

I

POLICE ABUSE

A. Police Abuse Involving Deadly Force and Serious Bodily Injury.

LEAA should immediately establish uniform standards for police abuse. Such standards should be based upon the model of the Honolulu, Hawaii, Police Department, who, in recent years has averaged only one death. Said guidelines should then be utilized to strictly rate targeted law enforcement agencies in the following categories:

1. Police caused deaths.
2. Deaths by shootings.
3. Deaths by other means.
4. Police inflicted serious bodily injury.
5. Citizens' complaints of police abuse and excessive use of force.

These categories should then be analyzed by race, geographical area, division, sub-division, and by individual officers.

Guidelines should then be established for metropolitan areas based upon the Honolulu example and adjusted on a per-capita basis.

LEAA guidelines and uniform standards should be then enforced by annual audit and investigation. Any law enforcement agency in violation of the guidelines should then be placed under probation for

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a period not to exceed one year. Those law enforcement agencies that remain in violation of the guidelines for a period of two years must then be prohibited from receiving any federal or LEAA funds for any programs, projects, technical assistance, equipment, funding, or federal support, whether monetary or otherwise. Further, those law enforcement agencies in violation should further be scrutinized to determine whether said agency promotes or retains those officers who are identified as repeat offenders of citizens' rights.

For those law enforcement agencies that remain in violation of guidelines for more than three years, LEAA shall then recommend appropriate civil and criminal proceedings against those individuals, supervisors, law enforcement agencies, or public entities responsible for said continued violations.

B. Alternative to the Use of Deadly Force.

LEAA should discontinue the funding for the purchase, development, or research in lethal weapons used by law enforcement agencies. LEAA should continue funding, and increase said funding for those law enforcement agencies who research and develop non-lethal, or less than lethal weapons. These are devices and agents intended for use in normal law enforcement application that do not create a substantial risk of permanent injury or death.

LEAA should increase funding for those law enforcement agencies that put to use on a permanent basis, less than lethal weapons as alternatives to deadly force.

C. Community Supervision of Law Enforcement Agencies.

LEAA must initiate the development of a uniform citizens' complaint procedure for the reporting, investigation, and reduction of police abuse. It is proposed that LEAA should provide funding to cities and other governmental entities who establish civilian review boards or other similar entities which include the following elements:

1. Exclusive jurisdiction over citizens' complaints of police abuse, false imprisonment, and excessive use of force.
2. The authority to make factual determinations and to discipline or remove offenders.
3. The authority to review police procedure and policy concerning police abuse or excessive use of force.
4. The authority to independently investigate all allegations of police abuse or excessive use of force, with full subpoena powers and immediate and unrestricted access to areas of alleged police abuse.

No specific guidelines are suggested for the composition or formulation of other aspects of civilian review board. However, it is essential that those review boards funded by LEAA contain positive aspects of community input and total independence from internal police department influence.

II

A. Political Intelligence Gathering.

1. LEAA should continue to require that any state or local agency that involves itself in political intelligence gathering should be prohibited from receiving LEAA funds, or any federal funds whatsoever.

2. LEAA should enforce its regulations prohibiting political spying by state and local agencies receiving LEAA funds by annual audit and establish sanctions, both civil and criminal for violations of LEAA regulations and standards.

3. LEAA should establish direct grants and other funding for cities and law enforcement agencies who establish disclosure laws or statutes that provide that an individual who has been the subject of political espionage may have access to those records accumulated by said law enforcement agencies.

4. LEAA should provide funding for cities and law enforcement agencies who establish laws prohibiting political intelligence gathering and projects for enforcement of said laws.

THE HISTORY OF LEAA'S FAILURE TO CONTROL CRIME

Arising out of one of the Omnibus Crime Control and Safe Streets Act of 1968, the LAW ENFORCEMENT ASSISTANT ADMINISTRATION (LEAA) was established as a result of a "law and order" mentality which arose in response to the crisis that was being created by this Country's involvement in the Vietnam War, and the popular response against that war. LEAA was set up because:

> Crime finds that the high incidents of crime in the United States threatens the peace, security and general welfare of the Nation and its citizens. To reduce and prevent crime and juvenile delinquency and to insure the greater safety of the people, law enforcement and criminal justice efforts must be better coordinated, intensified, and made more efficient at all levels of government.[1]

Among other things, LEAA was to be a funding mechanism for local police to acquire crime prevention, hardware and techniques. The concept was that if the crime rate increased, it could be controlled and reversed by militarization and increasing the fire power of local police departments. According to FBI statistics, crime rate had increased during the 60's before LEAA became law. Those same statistics now indicate that the same increases and fluctuations have been recorded by the FBI during the 70's.[2] It has now been made abundantly clear that although police have been funded and armed at a unprecedented high level, they have done little to stem the rise in serious street crimes which run rampant in the Hispanic, Black and other racially different communities.

It is without doubt that the underlying reason for crime in the United States arises out of the growing number of unemployed, especially among youth where crime rates are the greatest, the destructive effects of war, conscription, alcoholism, and the abundant access to serious and disabling drugs. While the police have sought more and bigger guns, more officers, helicopters, gasses, computers, and every other sort of technology, this expenditure of federal funds has been totally ineffectual in protecting working class and minority communities from crimes of personal and economic victimization. This conclusion is supported by a number of studies, financed primarily by the LEAA.

In 1965, when the number of police officers on duty in the subways of New York was tripled from 1,200 to approximately 3,200, a short term drop in crime followed. During the next five years, however, the crime increased six times over the 1965 level. Some nighttime crime was prevented, at a cost of $35,000 per felony, but the crime rate was simply displaced by daytime crime.[3] A similar result was found in a project in Atlanta, Georgia.[4]

In Kansas City, an experiment known as the Preventive Patrol Experiment, financed by the Police Foundation, found that tripling the levels of police patrol vehicle had no effect on the crime rate; a subsequent experiment in eliminating patrols and simply responding to citizens' calls for assistance also made no difference.[5]

Another comprehensive study found that there was no relationship between the level of crime and the level of police expenditures in the 166 largest urban areas in the United States.[6]

Studies of foot patrol practices show that massive increases in the number of officers on patrol may lessen the level of street crime in a given place at a given time but do not reduce the overall rate. Even when the police have refused to work, there has not been any appreciable change in the crime rate, with the apparent exceptions of Boston in 1919 and Montreal in 1969.[7]

According to a systematic evaluation of LEAA by the Center for National Security Studies,

> The evidence is overwhelming: the Federal Government has greatly increased its expenditures to combat crime, but these expenditures have had no effect in reducing crime. Not only has the LEAA program failed to halt the rise in crime rates, but the program administrators have not yet determined the steps or procedures that can be taken to achieve that goal.[8]

A more sophisticated and accurate survey of crime victims nationwide showed no significant change in victimization rates for violent crimes and showed an increase in rates for property crimes from 1973 to 1974 - a period when LEAA's programs were supposedly having its greatest impact.[9] In an evaluation of LEAA's crime reduction capacity, an important LEAA policymaker stated "we have learned little about reducing the incidence of crime, and have no reason to believe that significant reductions will be secured in the near future."[10]

POLICE ABUSE AND LEAA

What can be said for the increased militarization and arming of law enforcement agencies is that civilians killed by the police have increased to alarming proportions. Citing a recent report release from the New York Times, Congressman John Conyers indicates that in the last decade, approximately 6,000 people have been shot to death by police in the United States. Of these, an excess of 50 percent are racial minorities. These statistics are consisted with other reports indicating that an average increase of approximately 350 citizens killed by police each year has been shown over every decade since the 1950's.[11] For example, in Los Angeles County, in excess of 230 shootings per year in the 1970's have resulted in excess of 30 additional deaths per year, every year, since 1975. Of these, 80 percent were minority, and slightly lower than half of those killed at the hands of law enforcement officers were Hispanic. Armando Morales, Professor of Psychiatry at the University of California at Los Angeles, reports in a recent paper that Chicago Police's killings of citizens revealed that the death rate for Hispanics was highest, 4.5 for 1,000 population, Black citizens followed with 2.67 per 100,000, and White citizens have the lowest rate at .34 per 100,000. Hispanics were killed by police in Chicago between 1969 and 1970 13.2 times more often than Whites. There are abundant studies indicating that law enforcement agencies kill, maim, arrest, prosecute, jail, imprison, and spy upon minority communities significantly disproportionate to their numbers in the population at large. At the time of this writing, another LEAA funded program which consists of a federal report on the Los Angeles County District Attorney's Program has voiced what the Hispanic and minoirty communities have known for 50 years. In his report, Gerald M. Caplan stated:

> I feel that L.A.P.D. is not willing
> to go to great lengths to avoid shooting
> a civilian when the rules permit it.

Caplan went on to warn the community that a citizen who confronts the L.A.P.D. should "do so at his or her own peril".[14] And, as though to prove the truth, on Thursday, June 26, 1980, the Los Angeles Times reported the death of Larry Morris, a 28-year-old laundry man. The paper quotes County Coroner Thomas Noguchi as listing strangulation by a baton as one of the probable causes of death. It is admitted by the Police that they used the batons to subdue Morris, that he was unarmed, and that he had been pursued into his second-floor apartment because the officers believed that fire-crackers set off by youngsters in the neighborhood were gun shots. County Coroner Thomas Noguchi states:

> Morris' body showed evidence of perhaps
> twenty to twenty-five bruises, at least five
> on the trunk of the body inflicted by batons.

Noguchi further said that the cause of death was possibly choking because,

> in the neck area, there are distinct bruises -
> not on the skin (surface) but in the internal
> structure - indicating that the neck had been
> squeezed with a choke-hold type of maneuver.
> In addition, there was a thin (exterior bruise)
> about three inches in length found in the neck
> area.

In the past, LEAA funded programs have consisted of hiring more police, building detention centers, investing in police training and public relations sessions, and purchasing communications and computer equipment. This was determined by a summary of hearings held by Congressman John Conyers' Sub-committee on Crime (August 17, 1978). These hearings on a proposed reconstruction of LEAA stated that LEAA spent nearly 6 billion dollars in ten years with "little or no impact on the rate of crime, the fear of victimization, or the sense of injustice experienced by persons- especially minorities and the poor - who come in contact with the criminal justice systems." It cannot be said with accuracy to what extent LEAA's programs have increased the rate of police abuse and police brutality against citizens. Clearly, an inference can be drawn that by increasing militarization and by acting on the presumption that more force can be used to eliminate crime, LEAA may have unwittingly contributed to the regeneration of conditions that lead to the Watts Riot in 1965 and the wave of civil disobedience and violence that swept the Country, and that has appeared to have been rekindled in Miami, Florida in 1980.

THE PROBLEM AND TRADITIONAL REFORMS

It is submitted that LEAA must change its direction and principles in order to arrest crime, including crimes by police against citizens. LEAA must direct its energies and funds toward the direction of changing police operations to make them accountable to civilian authority and to the law. It is without doubt and irrefutable that physical assault on persons by policy as a mechanism of social control is a wide-spread problem in the United States. Further, it is characterized by a high rate of minority victims, and by officers who, out of their own biases, ignorance, and fears, have attacked and abused people they see as threatening or inferior. All too often, these attitudes and actions have been shared, condoned, covered-up, and defended by police supervisors and local administrations. For example, according to a 1977 report of the Public Interest Law Center of Philadelphia, 58 percent of those reporting police brutality were Black and Puerto Rican. 15 In Denver, Colorado, the northern most city with a large concentration of Chicanos, was the scene of an apparently gratuitous killing of two Mexican-Americans by police in the Summer of 1977. The police killing of a young Chicano laborer in Houston, Texas in the same year, prompted a study by the Texas Monthly, in which Houston was described as a "police state." Attorney Percy Foreman, cites the criminal justice administration and the district attorney's office which he says "have white-washed every charge against a policeman," thereby encouraging more police violence by letting police know that they are free from sanctions of law. 16

In that study, a Houston city attorney told the Texas Monthly that events leading to the killing of the young Chicano worker would never had happened had not a long string of earlier incidents and killings been tolerated and even ignored by official indifference and had not excessive use of force been allowed to become a way of life for Houston policemen. 17

Traditional reforms for curbing police abuse have fallen into two categories: first is the improvement of the caliber of the force by better selection and more adequate training, particularly in social relationships; and second is the establishment of an outside review board to hear citizens' complaints and recommend appropriate discipline. Both of these remedies are based upon the presumption that the misconduct is the result of the individual officer acting with excesses. The argument further goes that these officers must be weeded out and/or their behavior must be corrected by training or discipline. Although there is some merit to these approaches, standing alone, they are clearly inadequate.

SUPERVISORIAL RESPONSIBILITY

It is those in command, not the line officer, who is fundamentally responsible for police abuse. Police abuse has its roots not only in the shortcomings of individual officers, but in the system of which they are a part. Most officers will tell you that they are usually trained by their superiors to go along with the program and do as they are told. This is not to say that we completely discount the bad effects of improper selection of officers, or oppose efforts to retrain them more adquately for their difficult, sensitive, and thankless work. But, it is strenuously argued that the role of the police, and indeed, the role of the criminal justice system, needs redefining if the police are to escape being cast into the role of oppressors and law breakers. Today, the individual officer, rather than the police command, bears the brunt of public ill-will generated by oppressive acts and the officer is caught in the middle between citizen outrage and command orders. As part of a quasi military organization, faced with this dilemma, the individual officer has little to do but to obey orders and close ranks with the department and other officers who also may engage in abusive conduct.

POLICE ATTITUDES

While "street crime" is endemic to poverty areas and gives rise to greater police action as well as to greater police abuse, no racial or class sector of society seems to be totally immune. It is clearly observable, however, that minority populations bear the brunt of police lawlessness, against which they usually feel they have no legal recourse or political or social/economic clout. Also, the extent to which city administrations, police officials, and groups who encourage racial discrimination allow or condone police biases and improper behavior relates directly to the extent of police abuse. A survey of police attitudes and public responses are cited in vigilante politics (University of Pennsylvania Press, 1976). One writer quotes a governmental report which found that police (predominately white across the nation) are generally hostile toward Blacks and other minorities, practice wide-spread brutality, and have little understanding of the constructive role of political dissent in a democracy. 18 Too often, they lack understanding for the reasons for hostilities which pervade many minority groups and barrios - frequently expressed as much against one another as against dominant groups or the police who are seen as representing an oppressive society of which they have no part.

These studies indicate that increasingly, the line officer feels threatened and besieged, especially in neighborhoods or communities of which he is not familiar. In these communities, he feels isolated, confused by conflicting attitudes and conflicting directives.

UNIFORM STANDARDS FOR POLICE ABUSE, AND RECOMMENDATIONS

Such standards should be strictly enforced and should have as their basic goal and as their guiding light, a change of orientation from the ideology of confrontation and escalation to one of non-confrontation and capture. This change in attitude and a policy that the use of deadly force is the last alternative, has been proven by the Police Department of Honolulu, Hawaii, to be effective.

In a recent CBS Editorial, CBS Newsreporter, Connie Chung, presented a comparison between the Honolulu Police Department and the Los Angeles Police Department. The results were startling and eye-opening. In the last five years, Honolulu P.D. had averaged one death per year at the hands of police officers. Also significantly reduced in comparison to L.A.P.D. were the number of serious bodily injuries, and the number of citizens' complaints against officers. Critics of this study stated that Honolulu could not be compared to Los Angeles. But the study went on to further show that when adjusted for population, Honolulu actually had a higher number of violent crimes, including robberies, murders, rapes, and an equivalent number of burglaries, and other serious crimes against property. The study went on to point out that the guiding principle for the Honolulu P.D. was capture, not confrontation. Each officer, instead of focusing upon the use of the pistol or rifle as the focus of their training and qualifications, the Honolulu P.D. required extensive use of hand to hand combat which included one month of re-training and practice per year for officers out of the academy, and a rigorous six-months training before entering the Honolulu P.D. importantly, weas the attitude of the officers as reflected by the policy of their supervisors. The use of deadly force was the last alternative.

LEAA should establish guidelines based upon the Honolulu model. Further, said guidelines should then be utilized to strictly rate law enforcement agencies in which police abuse has been identified as a problem. Some categories suggested are: (1) the number of deaths caused at the hands of police; (2) the number of those deaths by shootings; (3) deaths inflicted by any other means; (4) police inflicted serious bodily injury; (5) the number of citizens' complaints of police abuse and excessive use of force filed against any particular department; and (6) the number of lawsuits filed against any particular police department.

Upon analysis by race, geographical area, division and any other subcategory of any particular police department, and by individual officers, this data could then be used to determine whether a police agency is in fact guilty of excessive use of force and brutality on its citizens.

These guidelines and uniform standards can be enforced by an annual audit and investigation by LEAA. Violations of the guidelines should require probation and finally prohibition or elimination of any Federal or LEAA funds to the offending law enforcement agency. Further analysis must be done to determine whether those wrong-doning agencies promote or retain those individual officers or their supervisors who are identified as re peat offenders of citizens' rights. Supervisorial officers who encourage, condone, or promote those officers who are identified as repeat offenders of citizen's rights must be identified.

Finally, law enforcement agencies that remain in violation of these guidelines for more than three years should then be subject to appropriate civil and criminal proceedings against those persons identified as being responsible for the continued violations.

These suggestions are submitted as a scientific approach to a national problem that if left unresolved will continue to fuel the fires of racism, violence, crime, terrorism, and will if ultimately lead to the ultimate confrontation between citizens and their police.

Until LEAA, or the Department of Justice sets forth guidelines as to what is permissible and what is impermissible, offending law enforcement agencies will continue on their course. An analogy may be drawn between the automobile industry who, for a number of years, refused to recognize that pollution was creating serious damage to the society as a whole. It was not until constraints were placed upon inefficiency and fuel consumption, and pollution standards were rigorously enforced that the entire attitude and direction of the automobile industry was changed. The same must be said for law enforcement agencies. They must not be allowed to argue that it is permissible that police in Houston, Philadelphia, Los Angeles, and other offending cities have a license to use deadly force whenever it is "within policy." The LEAA report prepared by Gerald M. Caplan (March 7, 1980) 19 concluded "L.A.P.D. does not view the rules on use of deadly force as forming the outer-most limits within which discretion can be exercised, but rather as setting forth a set of conditions which, when fulfilled, mandate a shooting." It is clear, that with this type of attitude that no shooting policies, nor guidelines with regard to the use of excessive force, nor investigation procedures will be effective against stemming the rising tide of police abuse. It is only when LEAA and other federal government agencies address the factual data in a scientific manner that law enforcement agencies and local administrations will get the message to reduce police abuse. Finally, should these monetary sanctions and incentives fail to reduce police abuse in any given area, said agencies and individuals should be scrutinized to determine the specific source of the problem. Critical to this analysis would be whether said agency promotes or retains those officers who are identified as repeat offenders in police abuse situations. The self-policing in-house investigation and determination by the particular police department should not be considered as definitive of whether an act of police abuse occurred. This finding would clearly be unreliable. Rather, the raw data should be that which determines if there are offenses and offenders. Death, serious bodily injury and citizens' complaints are the most accurate determination of whether someone is having trouble relating to the community, and whether that police agency condones continued excesses on the part of its officers.

Finally, where a law enforcement agency remains in continuous violation, LEAA should then recommend appropriate civil and criminal proceedings against those individuals, supervisors, or public entities responsible for the continued violations and seek, on behalf of the appropriate class, remedies for continued violation of LEAA guidelines.

ALTERNATIVE TO THE USE OF DEADLY FORCE

Weapons are the ultimate instrument of police force. They are constantly used, specifically to subdue suspected criminals by killing or injuring them and in general, to intimidate the entire population. Overt racism of the police and of the general society can be gauged by the police use of weapons since Hispanics and other minority races are fired upon and killed by police much more than those in the White community. 20 Weapons are generally classified into lethal and non-lethal categories. The standard lethal police weapon is the .38 caliber revolver although recently some departments are starting to use the more powerful .357 magnum. Perhaps more significant is the increasingly widespread use of the dum-dum bullets, which are flat, or hollow-tipped bullets which expand when they enter the body. They rip wide, deep wounds, resulting in more bleeding and death in many cases. Further, medical evidence supports the fact that the expanding rounds frequently leave particles of lead in the body, which then may circulate throughout causing added injury and death. The 1907 Hague Convention outlawed the expanding dum-dum bullets on the grounds that they were "calculated to cause unnecessary suffering." Those same bullets have been banned from use in the United States Armed Forces and other military units throughout the world. Despite this, close to 900 police departments were using dum-dum in 1972, and that number is increasing. 21 Recently, community organizations in Seattle, Washington, and Los Angeles, California, have protested the police departments' decision to use hollow-tipped bullets. The minority community has led in the struggle since police figures show that 60 percent of the suspects fired upon by police officers in the last three years have been Hispanics, Blacks, and Asians. Also, now the standard equipment in many patrol cars is the riot gun - a twelve gauge shotgun which can fire dum-dum slugs as well as double-zero buckshots (each shell containing nine lead pellets the size of a .32 caliber slug). Most police arsenals also contain machine guns, sniper rifles, and other rapid fire automatic weapons for riot control. [22]

Most of the recent research and development in police weapons have been done on the so called "less than lethal weapons." The National Science Foundation defines them as coercive devices and agents intended in normal law enforcement application not to create a substantial risk of permanent injury or death. Less than-lethal weapons range from various night sticks, stun guns, the rubber bullets used by the British in Northern Ireland, to water cannons, various chemical gases, and electrified batons. Other sophisticated innovations are the sound curdler, paint gun, and instant banana peel. [23] Special mention should be made of equipment developed by Sylvannia Electronics to monitor troop movements along the Vietnamese Ho Chi Minh trail. This has now been brought home and is erected along the U.S./Mexican Border in an attempt to control drug and illegal entry of Mexican Nationals. [24]

RECOMMENDATIONS: NON-LETHAL WEAPONS

It is recommended that LEAA should continue funding for the purchase and development of non-lethal weapons for use by police. LEAA is currently funding this research and development. [25] It is recommended that in order to encourage and provide an incentive for the continued funding, research, development, and use of non-lethal weapons, that LEAA take the following measures:

1. LEAA should discontinue funding for the purchase, development, or research in lethal weapons to be used by law enforcement agencies.
2. LEAA should continue funding and increase said funding for those law enforcement agencies who research and develop less-than-lethal weapons.

3. LEAA should fund and increase funding for those law enforcement agencies that use, on a permanent basis, less-than-lethal weapons as alternatives to deadly force.

COMMUNITY SUPERVISION OF LAW ENFORCEMENT AGENCIES

With each act of police abuse, each beating, shooting, death, false arrest, insult and profanity made by police, that segment of the population who are the subject of such abuse loose faith in the integrity of their government. One method for the re-generation of community support for a community police department has been civilian review boards. These, as well as other reforms involving civilian input into the control of police activities, are meant to bring about accountability and to create a public forum that would tend to eliminate the constant allegations of "white wash."

The first citizen review board was organized in Rochester, New York. This was followed by citizen boards in New York City and Philadelphia. Despite popular support, the boards were quickly phased-out or co-opted. The Philadelphia Board's experience was typical of many such efforts around the Country. With no subpoena power or independent investigative staff, it had to depend totally upon the police for the fact finding function and was forced to wait for a formal civilian complaint before it could initiate its own investigation. With practically no support from the City administration and open hostility from the local police association, it became distrusted by the very community organizations who fought for its initiation, became bureaucratically inefficient, and in fact did nothing to minimize police racism. 26 Similarly, in New York in 1966, the Patrolmen's Benevolent Association waged a successful referendum campaign based on fear and racism to defeat the civilian review board. 27 In Denver, Colorado, a citizen's initiative to establish a review mechanism was defeated, largely because of police opposition. [28] Currently a civilian review board is attempting to qualify in Los Angeles in the face of active campaigning by L.A.P.D. Chief, Daryl Gates, the L.A.P.D. Policemen's Association, and members of the police force.

Open fear and counter attacks against modest attempts to curb arbitrary police power have been so successful that by 1976 Berkeley's Police Review Commission (PRC), was perhaps the only remaining effort of the wide-spread campaign for civilian review boards. It too suffered many difficulties from its inception.

The PRC's nine members are appointed by the mayor and the city council and are empowered to investigate complaints against the police, to review and recommend policies, and to subpoena necessary documents and other material for fact finding. Due to police non-cooperation and a lack of enthusiastic support by the city council, it took the PRC over a year to set up trial boards, its mechanism for disposing of citizens' complaints. While the Commission has redressed several grievances against individual officers and raised community consciousness through public forum, it has not been effective in challenging the institutional racism of the police, nor in altering law enforcement priorities. This may be attributed in large part to the initial proposition set forth in this paper - it is the command, not the line officer, who is fundamentally responsible for abuse. Further, it is clear that police only act within the society in which they live and as long as deeper patterns of high unemployment, poor housing, alcoholism, abundant drugs, and poor education remain a very low priority for local, state, and federal governments, the pattern of police repression and the use of a military police to control these populations will remain a part of life in the United States.

RECOMMENDATIONS ON COMMUNITY SUPERVISION

In light of the shortcomings set forth above, LEAA must nonetheless institute and develop a uniform citizens' complaint procedure for the reporting, investigation, and documentation of police abuses. It is proposed that LEAA should provide funding to cities and other governmental entities who establish civilian review boards, or other similar entities for public accountability which include the following elements:

1. Exclusive jurisdiction over citizens' complaints for police abuse, false imprisonment, and excessive use of force.
2. The authority to make factual determination to discipline or remove offenders.
3. The authority to review police procedure and policy concerning police abuse or excessive use of force.
4. The authority to independently investigate all allegations of police abuse or excessive use of force with full subpoena powers and immediate and unrestricted access to all areas of alleged police abuse.

Like any other governmental institution, before a civilian review board can function it requires the support of the community, and the local government. As long as there is resistance by the dominant society, police and law and order factions, and those who fear the backlash from the political power of police departments, reforms such as civilian review boards, by themselves, do not offer any hope of significantly changing the way the police behave. The major problem with review boards is that they do not, by their very nature, challenge the larger and more basic questions of who runs the police, and who determines the priorities of police work. Thus, even if they do succeed, such as in the Berkeley example, they do so only at the level of toning down some of the worst abuses of the existing police systems.

In conclusion, it can be said that, to the extent police abuse comes from police bureaucracies that openly condone and permit it, review boards may be effective. However, where police abuse, or more exactly, where there is a continued historical pattern of police repression of Hispanic, Black and poor communities, that pattern is more directly related to the economic and political realities of our country. Consequently, to that extent, review boards are ineffectual. These realities are more sharply brought into focus in the following discussion of the history of political surveillance.

POLITICAL INTELLIGENCE GATHERING

The difficulty in organizing our people is frequently remarked upon among Latinos. With our vast and growing numbers, we must ask why people are afraid to be involved. It would appear that Hispanics and Blacks, in their struggle for economic and social equality, are seen as a threat to the dominant society. As such, reluctance to join forces may be tied to the knowledge that direct control of police department intelligence units remains, to date, with those who view Latino and Black organizations as a threat to their economic and political power.

This reluctance is well founded. In 1970, this writer, who had by then graduated from college and entered law school, witnessed the not-so-unique disintegration of a powerful Chicano community organization which had been active in the fight for recognition of the civil rights of Chicanos in Los Angeles, due primarily to government subversion.

The organization, National Chicano Moratorium Committee, whose principal organizer was Rosalio Munoz, had tied together even the most divergent elements of Chicano society through four years of grass-roots organizing. Individuals and organizations from the most conservative to the most radical, from the oldest to the youngest, from the businessman to the vato loco, came together for the first time, in a struggle for education. They began with the high school walk-outs of 1967 and continued through the anti-war years. Even in 1970, police abuse was considered to be, by the community, one of the major issues and problems.

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Eustacio Frank Martinez was at the center of the destruction and disintegration of the Chicano Moratorium Committee. He rose to the position of National Chairman of the Committee and became known as a regional leader in the Brown Berets. He was also known as a real Chicano crazy. Martinez continually advocated violence and the use of illegal weapons. He stole documents and exploited personal differences, lied, and perpetuated gossip and rumors to discredit the leadership of Rosalio Munoz. For example, in October of 1970, during a campaign of then Senator John Tunney in East Los Angeles, Martinez disrupted a peaceful protest by attacking Tunney with violence, unknown to his followers at the time. Martinez was an informer/agent/provocateur for the Alcohol, Tobacco and Firearms Enforcement Division of the U.S. Treasury Department, and was working in direct conjunction with the L.A.P.D. and its undercover spying unit the Public Disorder and Intelligence Division (PDID). Martinez infiltrated the Brown Berets and the National Moratorium Committee. He supplied intelligence information from both organizations, at the same time he committed illegal acts which led to the police raids and arrests of organization members and ultimately the destruction of the involved organizations. Additionally, he infiltrated La Casa del Carnalismo. His assignment was to pick out leaders of the Chicano Liberation Front who he believed to be members of La Casa del Carnalismo, an organization which had taken responsibility for some bombings in the E.L.A. area. He had full authority from his superiors not only to participate in any bombing attempts, but to supply the explosives.

In September of 1971, Martinez appeared in Court on charges arising out of a demonstration. When he found that his U.S. Government superiors tried to frame him and to force him to plead guilty to his charges in an effort to get him out of the area and send him back to Texas, he defected. Shortly thereafter, Martinez returned to La Casa del Carnalismo, the community anti-drug center, and told them he was an agent, and was willing to give evidence for the defense in the case of "Los Tres Del Barrio", the name given to three men, Juan Fernandez, Alberto Ortiz, and Rodolfo Sanchez who had been charged with shooting a federal agent. The case centered around a federal agent/under-cover Latino who had set-up Casa del Carnalismo and its leaders by trying to plant heroin in the organization. During the attempted set-up, Los Tres, acting in self-defense, wounded the federal agent. Martinez spoke with Antonio Rodriguez, attorney for Los Tres, as well as members of La Raza Unida, and the Citizens Research and Investigation Committee. However, Martinez was prohibited from testifying in defense of Los Tres. The exculpating testimony of Martinez was not allowed by the Federal Court. Los Tres was sentenced to a total of 75 years in prison.

Other assignments given to Martinez included infiltration of the Mexican-American Youth Organization in Houston, Texas, and the Brown Berets in Houston. There, he provided intelligence information on both groups and perpetuated acts of provocation and violence in his role of a "militant Chicano leader." 1

The Seattle, Washington Police files which were released in a public disclosure suit in 1978 showed that on January 15, 1973, then Mayor Uhlman of Seattle, Washington, was briefed by the intelligence section of the Seattle P.D. on the background of the Chicano Director of El Centro de la Raza, a Chicano-run community organization. At that time, the Seattle City Council had already approved a lease-option plan with El Centro, and the final negotiations had been left to the Mayor. Subsequent to the briefing by the intelligence unit, the Mayor refused to sign the lease. There was nothing in the file indicating any criminal activity but it was clear that a file had been kept, and that the police had intended to influence the decision of the Mayor. In 1980, police spying on legitimate peaceful activists continue to be the target of police spying. The Center for Autonomous Social Action (CASA), a group dedicated to assisting undocumented workers in labor and education problems, was spied upon by Eddie Camarillo, who posed as a part-time law-student from 1975 through late 1978. Camarillo also infiltrated and spied upon the Citizen's Commission on Police Repression, Members of the ACLU of Southern California. City Councilman David Cunningham, and a variety of other peaceful groups up until late 1978. [2] Documents released on June 2, 1980, indicated that under-cover officers Connie Milazzo, John Dial, and Eddie Solomon, infiltrated peaceful civil rights groups. Solomon's role in the organizations that he infiltrated proved to be similar to that of Frank Martinez. In infiltrating the Coalition Against Police Abuse (CAPA), Solomon began and perpetuated rumors that caused dissention within the organization. He also infiltrated and rose to the position of office manager of the National Alliance Against Racist and Political Oppression and then became a prominent figure in the Young Workers Liberation League. [3] Members of these organizations state that Solomon offered the use of illegal weapons, offered to train persons to use illegal weapons that he offered to acquire, and urged the use of violence at peaceful demonstrations. He further created false stories and rumors about members of the organizations, created dissention and ultimately lead to the destruction of one chapter of the Young Workers Liberation League. [4]

In a recent nation-wide study of police intelligence gathering practices, the American Friends Service Committee which itself has been the object of police intelligence scrutiny concluded:

> As evidenced in response to civil rights and anti-war movements, even peaceful dissent is often treated in a hostile fashion by police who see themselves as believing in patriotic defenders of traditional systems and values.
>
> Intelligence units, by the largely clandestine nature of their work, have often pursued to illegal and dangerous extremes during surveillance and harassment of groups challenging established practices and institutions. By magnifying threats to internal security as they perceive it, police departments are often able to gain public and governmental support for increasing funding and expanding activities. 5

While public awareness of illegal intelligence has no doubt increased since Watergate and subsequent revelations, such activities have been growing throughout the century. The final report (April, 1976), of the U.S. Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (Church Committee) headed by Senator Frank Church, reminds us that the development of today's complex intelligence apparatus can be largely traced to its beginnings in the First World War. That report states: "...intelligence agencies, including the predecessor of the FBI engaged in repressive activity." This included: A mass round-up of some 50,000 people in order to find draft evaders; Nearly 2,000 prosecutions for "disloyal utterances and activities;" and The notorious "Palmar Raids" during 1919 and 1920 in which some 10,000 people thought to be "anarchists" or "revolutionary" aliens were rounded up and imprisoned.

Federal domestic intelligence programs were officially established in 1936 and police intelligence units popularly known as "red squads" pursued leftist political groups and "labor agitators" during the late 30's. The Church Committee found that, beginning in the mid 30's with White House approval and direction, the FBI entered a realm of systematic intelligence gathering on political ideologues and association. During this time, and continuing thereafter, Congress, as well as state and local governments were partners in neglecting their responsibility for clear legislative guidelines or the abolition of such illegal activity. [6]

The FBI and other local intelligence agencies were temporarily diverted by World War Two from their pursuit of leftists and activists. The German, Italian and Japanese-Americans, whether they were sympathetic to the interest of their homelands or not, became the new subjects of political espionage. Activists who rose to assist the victims of governmental excesses such as the American Friends Service Committee (AFSC) and American Civil Liberties Union (ACLU) also became targets for political espionage because they assisted German refugees, prisoners of war, and Japanese-Americans who had been interned by the U.S. Government. [7]

With the beginning of the Korean War, political surveillance activities once again turned to the "red" threat. The perceived "red" threat to the American economic system, the atrocities committed by then Senator Joe McCarthy, and the execution of the Rosenbergs ushered in the 50's. The AFSC and other groups involved in anti-war, anti-draft, anti-racist activities, or who supported the exercise of freedom of speech under the First Amendment by dissidents and minority groups, once again became the subject of political infiltration. Activists opposing the testing of the nuclear bomb, were spied upon. In the 60's and 70's, the civil rights movement became a strong and vocal voice, and opposition to the Vietnam War began to form. Concurrent with these developments, the intelligence gathering army, spied upon, resisted, and infiltrated the lives of those conscientious persons who were engaged in constitutionally protected activity. 8

Local police departments began to expand their intelligence gathering operations in response to a civil rights movement and anti-war movements of the 1960's. The Watts uprising in 1964 revealed to the Justice Department that the local police department did not have any "useful intelligence or knowledge that ghettos, about Black communities in the big cities." Following the rebellions in Detroit and Newark in 1967, the National Advisory Commission on Civil Disorders recommended:

> an intelligence unit staffed with full-time personnel should be established to gather, evaluate, analyze, and disseminate information on potential as well as actual civil disorders.... It should use under-cover police personnel and informants.... 9

Today, almost every major city's police department has its own intelligence unit for political surveillance. These units are always hidden within the police organizational structure, sometimes under the cover of internal security, inspectional services, or organized crime details. The elite New York City police unit deliberately uses the misleading title of "Public Relations Squad." A Los Angeles Times survey (May 15, 1980) of intelligence units in New York, Chicago, Washington, Houston, Atlanta, Detroit, and Los Angeles indicates that these intelligence groups in different cities routinely share information with the FBI, Army Intelligence, and the CIA. Although law enforcement agencies argue that such activities are over and done with and that their units are now being phased-out and diminished, the facts are to the contrary. In 1968, New York City had 90 under-cover agents and by 1970 Los Angeles had 167. 10 Currently, the New York Division has about 180 police officers and a budget of about 5 million per year. 11 L.A.P.D. spends approximately 2.4 million per year on its unit but refuses to inform the Los Angeles City Council of either the number of officers in P.D.I.D. or what they do. 12

Unfortunately, police intelligence agencies are proud of their efficient nation-wide system of instantly available information on individuals who have been subject to political espionage or criminal investigation. While this computerization of data may effectively track down criminal activity and sometimes save lives, it is clear that the innocent person who has been spied upon because of their beliefs and activities, are categorized with common criminals. Mistakes in reporting and errors can be compounded through repeat of false or erroneous information. People and groups not criminally involved have been, and will continue to be, widely and permanently stigmatized. Particularly, in the case of politically active groups and individuals, such gathering and emination of intelligence is dangerous to their guaranteed right to free association. The question to be asked is whether these worries and fears are real or imagined.

John Goldman and Larry Green describe the Cook county grand jury investigation of the Chicago Police Department's Intelligence Unit. That grand jury described the City as having "all the ear marks of a police state":

> Unchecked by public officials and relatively unknown to the general public, it trampled on constitutional rights, broke laws, and gathered information with little concern for either need or accuracy, the grand jury found. Police intelligence officers witnessed violence but made no arrests, worked closely with right-winged para-military organizations that harrassed anti-war and socialist groups, bugged telephones, committed burglaries and even incited violence the grand jury said.
>
> Speaking out against the war in Vietnam or opposing the policies of late Mayor Daley, championing civil rights or Eugene McCarthy, fighting pollution or questioning police activities, challenging a proposed freeway or advocating integrated housing, or even being a dissent member of the Chicago City Council was enough to merit a dossier in police intelligence files.
>
> .... a police officer admitted that he became president of an organization, and in that capacity urged members to commit acts of violence. That officer specifically urged members to shoot Chicago Police Officers. He even demonstrated the most strategic placement of snipers in downtown Chicago which would make possible the highest number of casualties the grand jury said. 13

It does not take much imagination to draw the parallel between Chicago in 1975 and Los Angeles in 1980. Surveys indicate that police intelligence activities in every major city of the United States continue to move ahead, out of control of the community that pays its wages. Los Angeles City Councilman, Zev Yaroslavsky, who has been a vocal critic of L.A.P.D.'s intelligence activities has also become a target of spying. Councilman Yaroslavsky has introduced legislation in July 1978 following the release of a list of 200 organizations upon which spying dossiers were being kept. Most of these organizations were non-violent peaceful organizations involved in political activities. He has now been joined by two Los Angeles City Council members, both of whom are Black, both of whom were spied upon during their interaction with Black community groups.

On June 5, 1980, the Mayor of Los Angeles, Tom Bradley, breaking a virtual silence on the now explosive controversy over police spying in Los Angeles issued the following statement:

> I will not tolerate the gathering of intelligence information on individuals or organizations that are not involved in either criminal or terrorist activities. Since recently released information indicates an apparent passed infringement on these constitutional rights, steps must be now taken so that this never again occurs in the future.

In Seattle, Washington, after lawsuits filed by the National Lawyers Guild produced discovery documents which proved the illegal espionage activities of the Seattle P.D., the Mayor adopted proposed legislation to stop political spying and introduced it to the City Council. After an intense political battle which lasted for over a year, the ordinance was finally passed in 1979. (See Appendix)

Currently, Los Angeles is in the process of drafting legislation that would both totally eliminate political intelligence gathering, unless it is related to a legitimate criminal investigation. In those instances where it is related to criminal investigation, it would require juridical approval prior to the initiation of the investigation. This legislation would allow persons who have been the target of surveillance access to their records.

RECOMMENDATIONS TO CURB POLITICAL SPYING

It is understood that in 1978 LEAA enacted regulations which prohibit political intelligence gathering by local and state agencies which receive LEAA funds. 14 It is urged that LEAA continue to prohibit any state or local agency that involves itself in political intelligence gathering from receiving LEAA funds, or any federal funds whatsoever.

In order to further encourage and enforce this regulation, annual surprise audits should be conducted on law enforcement agencies receiving LEAA funds. LEAA should also establish additional sanctions, both civil and criminal, for violations of LEAA regulations and standards.

LEAA should establish direct grants and other funding for cities and law enforcement agencies who establish disclosure laws or statutes that provide individuals and organizations, that have been the subject of political spying, access to the records accumulated by that agency. Public exposure of abusive intelligence practices have increased the public's awareness of and desire for more intelligence controls. Just as with police abuse, it is the community that is subjected to abuse of the intelligence agencies, that can most effectively address that abuse.

Finally, LEAA should provide funding for cities and law enforcement agencies who establish laws prohibiting intelligence gathering and for those cities who establish projects for the enforcement of such laws. However, for the laws to be effective they must contain these following components:

1) In order to collect political information related to a legitimate criminal investigation, a specific and detailed warrant must issue from a neutral judicial magistrate based upon the standards established by the Fourth Amendment of the United States Constitution. The warrant must articulate and set forth specific facts which rise to the level of "probable cause" to believe criminal conduct is eminent.

2) A neutral auditor must conduct random audits of all police files and make public reports about the police department's compliance with the law prohibiting illegal surveillance.

3) Whenever information is found to have been improperly collected, or when information involves a person who is not charged with a crime nor under a pending investigation, the subject of the intelligence gathering must be notified promptly.

4) The law must also set forth the proper functions of a criminal intelligence unit. It must specifically proscribe and eliminate the collection of political, religious, or personal information on persons not involved in criminal activity.

5) The law must set forth civil penalties for violations of the law which rise to the level of negligence. The statute should further recommend criminal prosecution for intentional violations.

We may never know the full extent of the political spying, set-ups, and dirty tricks that were played on Latino communities and their leaders during the 60's and 70's. Nor can we precisely say how that affected the development and growth of Latino communities, their leaders, organizations, and economic and political strength.

What we do know, is that since that time, fewer and fewer Hispanics have entered higher education, colleges have produced fewer Hispanic professionals; jails and prisons are filled with our people, and politically we remain as unrepresented and isolated as we were after the Korean War.

FOOTNOTES

The History of LEAA's Failure to Control Crime and Police Abuse.

Footnote 1: A project of the Center for National Security Studies, Law and Disorder IV, A Review of the Federal Anti-Crime Program Created by Title L of the Omnibus Crime Control and Safe Streets Act of 1968 (1976), p. 3.

Footnote 2: Law and Disorder, p. 7, footnote 4. The changes in the crime rates during the period 1968-1975, as reported by the FBI's Uniform Crime Rate (UCR) were as follows:

1968 - 17% increase over previous year
1969 - 10% increase
1970 - 9% increase
1971 - 6% increase
1972 - 4% decrease in crime, the first 17 years
1973 - 6% increase
1974 - 18% increase
1975 - 9% increase

Footnote 3: Ian M. Chaiken et al., The Impact of Police Activity on Crime; Robberies in the New York City Subway System, New York, Rand Institute, 1974.

Footnote 4: Center for National Security Studies, Law and Disorder IV, Washington, D.C. Center for National Security Studies, 1976, p. 32.

Footnote 5: George Kelling et al., The Kansas City Preventive Patrol Experiment, Washington, D.C., The Police Foundation, 1974.

Footnote 6: Thomas Pogue, "The Effect of Police Expenditures on Crime Rates," Public Finance Quarterly, 3, 1, January, 1975.

Footnote 7: New York Times, January 19, 1971.

Footnote 8: Center for National Security Studies, op. cit., p. 4.

Footnote 9: U.S. Department of Justice, Criminal Victimization in the United States: A Comparison of 1973 and 1974 Findings, Washington, D.C., U.S. Government Printing Office, 1976.

Footnote 10: Gerald Caplan in testimony before the House Committee on Science and Technology, 1975.

Footnote 11: National Center for Health Statistics, Division of Violent Statistics (U.S. Public Health Service).

Footnote 12: Report on Police Abuse in California, Presented by Assemblywoman, Maxine Waters, House Sub-committee on Civil Rights, Los Angeles, February, 1980.

Footnote 13: Armando Morales, Police Deadly Force: Government-Sanctioned Execution of Hispanics, Prepared for National Council of La Raza Symposium, June, 1979.

Footnote 14: Los Angeles Times, June 24, 1980.

Footnote 15: 2nd Annual Report on Police Abuse Complaints Received by the Police Project of the Public Interest Law Center of Philadelphia for the calendar year 1976, p. 12.

Footnote 16: Tom Curtis, Support your Local Police (or Else)," Texas Monthly, September, 1977, p. 83.

Footnote 17: Ibid., p. 158.

Footnote 18: Christian Potholm, "The United States and South Africa," p. 185, in Vigilante Politics, edited by H. Jon Rosenbaum and Peter C. Sederberg, University of Pennsylvania Press, 1976, drawn from The President's Commission on Law Enforcement and Administration of Justice, Task Force on the Violent Aspects of Protest and Confrontation, The Politics of Protests, U.S. Government Printing Office, 1969.

Footnote 19: Evaluation Design for Operation Roll-out, March 7, 1980.

Footnote 20: Paul Takagi, "A Garrison State in a Democratic Society," Crime and Social Justice 1, Spring-Summer 1974, p. 29.

Footnote 21: Washington Post, October 8, 1976.

Footnote 22: Los Angeles Times, August 22, 1970.

Footnote 23: Security Planning Corporation, Non-Lethal Weapons for Law Enforcement, Washington, D.C., 1972.

Footnote 24: Robert Barkan 'War's Technology is a Peacetime Spy," San Francisco Chronicle, January 19, 1972.

Footnote 25: Center for Research on Criminal Justice 'The Iron Fist and the Velvet Glove; An Analysis of the U.S. Police," 1975.

Footnote 26: National Commission on Law Observance and Enforcement, op. cit., p. 356.

Footnote 27: Raymond Fosdick, American Police Systems, New York; The Century Company, 1920, p. 357.

Footnote 28: American Friends Service Committee "The Police Threat to Political Liberty" (1979).

Political Intelligence Gathering

Footnote 1: Information Provided from Joint Press Release, issued by CRIC and La Casa del Carnalismo, January 31, 1972, and from Antonio Rodriguez and Rosalio Munoz.

Footnote 2: Los Angeles Times, Metro Section, June 3, 1980.

Footnote 3: Los Angeles Times, Metro Section, June 3, 1980.

Footnote 4: Personal Interviews with YYLW and NAARPR members.

Footnote 5: American Friends Service Committee "The Police Threat to Political Liberty" (1979) Section 1, p. 4.

Footnote 6: Church Committee, Book II, p. 80.

Footnote 7: American Friends Service Committee "The Police Threat to Political Liberty" (1979) Section 1, p. 4.

Footnote 8: *Ibid.*, p. 10.

Footnote 9: Report on the National Advisory Committee on Civil Disorders, Washington, D.C., Government Printing Office, 1968, p. 267.

Footnote 10: Frank Donner, "The Theory and Practice of American Political Intelligence," N.Y. Review of Books, April 22, 1971, p. 29.

Footnote 11: Los Angeles Times, May 15, 1980, How Intelligence Units Operate.

Footnote 12: Los Angeles Times, March 27, 1980.

Footnote 13: Los Angeles Times, May 15, 1980, How Intelligence Units Operate.

Footnote 14: Federal Register, June 30, 1978, "Criminal Intelligence Systems Operation Policies," pp. 28572-3.

APPENDIX

Summary of Seattle City Council's Draft Police Intelligence Ordinance -- March, 1979

I. PURPOSES AND GENERAL PRINCIPLES

Collection and recording of information by the Police Department must not infringe upon individual liberties or privacy rights. Information collected must be relevant to a criminal investigation. Investigative techniques must insure a minimal degree of intrusion. Information must be reviewed and purged periodically. Dissemination is limited.

II. DEFINITIONS, EXCEPTIONS AND EXCLUSIONS

Definitions Include:

> Restricted Information - that which concerns a person's political or religious activities, beliefs, opinions (including membership lists, participation in demonstrations, etc.)
>
> Sensitive Information - Private sexual information and restricted information.

Exceptions:

> Incidental references to sensitive information are described and exempted from the controls of the Ordinance (such as, information on an unknown suspect, information volunteered by the subject, relevant information collected pursuant to the city's Departments of Human Rights or Women's Rights, relevant information collected about a job applicant or an informant, provided consent has been given.)

Exclusions:

> The Ordinance shall not restrict or forbid confidential communications between department personnel and a psychologist, legal

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adviser, medical personnel, or chaplain; or information collected at the request of a prosecuting attorney about a subject on trial.

The Ordinance shall not restrict or forbid the collection of information about parades, processions, rallies, etc., pursuant to Seattle Traffic Code so long as the information is open to public inspection and indexing is limited to material on the permit application.

The police department may maintain a library containing literature from criminal justice agencies which must be open to the public.

Nothing in the Ordinance shall restrict or forbid the department from complying with a valid court order, collecting information about police department personnel pursuant to a police department internal investigation.

III. HANDLING OF PRIVATE SEXUAL INFORMATION

Private sexual information shall not be collected or recorded unless the information involves a sex crime, a felony where motivation for the crime may reasonably be suspected to be sexual, a violation of the law that by its nature is related to sexual activity (e.g., prostitution or pornography). The private sexual information collected shall appear reasonably relevant to the investigation of the unlawful activity.

Private sexual information shall be returned or destroyed within seven days of collection and before it is co-mingled with other departmental files, is placed in an investigatory file or is indexed.

An independent record shall be maintained of all transfers of private sexual information.

IV. HANDLING INFORMATION FOR PROTECTING DIGNITARIES

Restricted information pursuant to the visit of a dignitary may be collected without an authorization, only from public records or by communicating with persons planning an event in connection with the visit when they are advised of the purpose of the inquiry, or if it is an unsolicited communication. The chief may authorize additional collection of restricted information if he has facts which establish a reasonable belief that the subject of the information poses a threat to the life or safety of a visiting dignitary. To do so he must submit detailed information to justify the collection. Each such authorization shall be submitted to the auditor. All information collected pursuant to this section shall be maintained separately with limited access by department personnel. It must only be collected during the dignitary's visit and must generally be destroyed within sixty days.

Detailed requirements for receipt and transfer of restricted information are established.

V. HANDLING RESTRICTED INFORMATION FOR DEPARTMENT USE

Restricted information shall not be collected or recorded unless it is pursuant to a detailed and specific authorization signed by a unit commander and only when there is reasonable suspicion that the subject of the restricted information has engaged in, is engaging in, or is about to engage in unlawful activities and that the restricted information may reasonably lead to his or her arrest. Copies of the authorization and supporting documents shall be submitted to the auditor. Authorization shall have expired in ninety days, can be renewed only by the chief of police under the same conditions as the original authorization.

Detailed requirements for receipt and transfer of restricted information are established.

Notice to subjects of investigations involving restricted information shall be given if the auditor finds that the information was collected in violation of the Ordinance.

When time is of the essence, authorizations may be given orally and written down within 24 hours after receipt of the authorization. The official authorizing the collection of restricted information shall be responsible for the actions of subordinates.

VI. FUNCTIONS OF A CRIMINAL INTELLIGENCE UNIT

Affirmative duties of a Criminal Intelligence Unit are described in the Ordinance.

VII. POLICE OPERATIONS -- PROHIBITED PRACTICES

Department personnel shall not attempt to incite any person to commit unlawful violent activity, communicate false information, disrupt any lawful activity, or communicate derogatory information to discredit a person.

VIII. ENFORCEMENT AND PENALTIES

The Chief shall promulgate rules and regulations to implement the Ordinance. Within ninety days, the chief shall promulgate rules for the use of covert techniques, accessing tax, credit, health and other confidential records; for the use of physical, electronic and photographic surveillance; and for the use of informants.

Rules regarding use of informants shall include instructions that informants do not participate in unlawful acts of violence, use unlawful techniques to obtain information, or initiate plans to commit crimes. The procedures for use of covert techniques shall be designed to insure that investigations are conducted with the minimal degree of intrusion and are pursuant to this Ordinance.

The mayor shall appoint an auditor for a three year term who shall have access to all departmental records and who shall conduct random audits at least every six months to review compliance with the Ordinance. The auditor shall submit a written public report to the mayor of each audit. Detailed statistical reports about the use of the Ordinance shall be made annually by the chief of police.

The department shall establish disciplinary proceedings for violations of the Ordinance. A civil cause of action is provided for persons injured by department personnel who violate this Ordinance.

SELF-ASSESSMENT OF POLICE

By:

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Prepared for:

National Hispanic Conference
on
Law Enforcement and Criminal Justice

The Shoreham Hotel
Washington, D.C.
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the original document was blank.

While a teenager in the 10th grade, I was "encouraged" by my teachers to "drop out" and "get a job" since school had "nothing" to offer me. With this advice, I did in fact drop out. Due to my age and limited schooling, I could only manage to work several menial jobs. A deep sense of frustration surrounded my every thought. I became deeply involved in "car clubs". The so-called "car clubs" offered me an excuse to group together with others in my situation, usually for unlawful purposes.

After numerous skirmishes with the law, and much pressure from my parents to reform, I again felt that deep sense of frustration. Ingrained in that frustration was a deep-seated fear; fear of going to jail or prison, and of subjecting my parents and family to shame or ridicule. During this period of time, I was continually being stopped by a certain Highway Patrolman who was to play a most important part in my life. The Highway Patrolman cited me numerous times and never gave me "a break". This man became not only my friend, but he was a major influence in re-directing my life. He finally managed to convince me to straighten out by stating, "Hey Lou, you can't beat us... Why don't you join us? ... Otherwise, if you continue acting like you have in the past, you are a prime candidate for jail or prison."

With his encouragement, I submitted my application for employment with the local police department. The Chief of Police personally told me, "I don't hire punks, get the hell out of here! " He promptly tore up my application. I was "escorted" out the door,

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where I promptly landed on all "fours" in a patch of ivy bordering the sidewalk.

My youthful temper, my machismo, and self-pride demanded that I "get even" with the "pigs", especially with the Chief of Police. Every cop, yes, even my friend the highway patrolman, became my enemy. I must admit that I personally directed many unlawful activities against the police and society. I acknowledge my indebtedness to the sensitivity of several police officers who "cared"; who saw me as an asset, rather than a "trouble making" Mexican. Through their persistence and my determination, approximately 6 months later, I was hired by that same Chief of Police.

I only mention my past to express my conviction that every police officer, regardless of his/her nationality, must reach down to pull our young people up to something better, rather than aiming at "locking those punks up". We are perhaps the most visible image in our society. As such, we must be sensitive to others and we must continually search for a "better way" to deal with our youth.

Unquestionably, the beat officer is the most valuable player in the police team; it is he/she that either opens or shuts the door of communication with society.

Litigation by citizens against police, i.e., civil rights violations, police brutality complaints, etc., are only a reaction: They come after the fact. We must concentrate on prevention--before anything happens in the first line and with the field patrol person. The selection process and operating authority must recognize and uphold the ideals of equal opportunity and affirmative action. Affirmative action is perhaps the most "misunderstood" phrase in the English language. To some it conjures up a fear of reverse discrimination and the lowering of standards. Activist groups coined the term "affirmative action" by lawfully readdressing the system.

Law enforcement stereotypes affirmative action in a negative light. Affirmative action can be the foundation for equal opportunity for everyone. It includes all the various methods through which equal opportunity for minority groups and women is made a reality. It recognizes that positive action is presently required both to insure against intentional and unintentional discrimination in employment.

In-service training on affirmative action is a must. Frank and open discussions must be encouraged if common sense is to prevail. Affirmative action is most difficult when one feels as though they are being forced rather than choosing to be reasonable and just. A department that practices equal opportunity in hiring practices will have less friction in this sensitive area, without reducing law enforcement effectiveness.

The selection process must include citizen participation. Meaningful "weight" must be given to their judgment. Selection of citizens should reflect the racial make-up of the community. Citizen participation groups should also include certain supervisory staff, including the Chief of Police.

staff, including the Chief of Police.

Training of "raw" recruits must include "meaingful" training and exposure to everyday police/non-police activity. The importance of having sensitivity to our fragile society should be stressed. As part of this training, the recruit must become directly involved within the community where he/she will be working. Some suggestions for this would be:

a) Live in as a member of family within the "Barrio" or a family of another nationality or race for a period of approximately 2 weeks.

b) Take a required Community Awareness Course

The purpose of this "sensitivity training" is to instill in each recruit officer an awareness of the social nature and composition of the community he serves and an appreciation of social developments and behavioral patterns affecting himself and citizens with whom he comes into daily contact. Instruction should be provided by persons who are most familiar with the subject matter; many of whom may not be affiliated with the police service. The following should be included in any such program:

1. Community Orientation - A history of the ethnic and cultural composition of the city, with particular emphasis devoted to the trend in population. For example, it would be shown how a community has gone from a pre-World War II white majority to a projected minority majority by 1990. The course

should discuss the implications of this population shift for all facets of city government, especially the police department. The course can be conducted in various locations throughout the city in order to provide an orientation to the various cultures represented in the city. Discussions with representatives of various community organizations, should be an integral part of this orientation.

2. Community Field Experience - The recruit officer should be given an assignment that will place him in different community environments. Assistance from agencies such as the Welfare Department, Department of Human Resources, Missions and Legal Aid, etc. should be made available to him. The experience is designed to create a better understanding of the perspective of those who use these services.

3. Internship - An opportunity will be provided each trainee to work for one day in a social service agency such as the County Welfare Department or Health Clinic. The purpose of this experience is to expose the recruits to other agencies involved in providing service.

4. Concepts of Culture - This subject area examines man and culture, the trainee will receive an understanding of other cultures and the nature of prejudice.

5. Minority Cultures - These discussions relate to the various ethnic communities. They would include a historical analysis of the basis for current postures and the resulting

economic, sociological and psychological factors and their implications for police work.

6. The White Middle Class - This session is meant to be a discussion, representing a variety of viewpoints on the dominant culture. It will include a discussion of expectations, attitudes and the implications of those viewpoints for police work.

7. The Counter Culture - An exploration of the origins and causes of the "anti-establishment" movements. It will deal with the values and aspirations of the counter culture and their significance in regard to police work.

8. The Police Culture - An examination of the police as a distinct culture. It would explore the causes and implications of this culture, as well as the various subcultures within it, e.g., the role dilemma of the black officer, Hispanic, etc. in relation to the minority and non-minority communities as well as the non-minority officers.

9. Crime in America - A discussion of the relationships between the community, the individual and the institutions of society as they relate to crime and crime trends.

10. Violence in America - Explores violence as a tradition in the American past. It deals specifically with the causes and possible solutions of urban riots, criminal violence and campus disorders.

11. Role of Police in Society - Observations - An explanation of police functions should be thoroughly examined, with particular emphasis on the obligations, responsibilities and authority of police officers when dealing with the use of discretion.

12. Judgment-Avoiding Conflict - A discussion of the practical aspects relating to citizens under potentially stress-filled situations. Particular attention should be given to day-to-day crisis techniques which the officer may employ to accomplish his tasks in a manner which will afford a minimum of resistance and antagonism from persons with whom he deals. Special emphasis will be given to discussions concerning the psychological aspects of resistance and verbal abuse.

13. Discretionary Decision-Making - An explanation of the policeman's role in common situations requiring exercise of police discretion should be given.

14. News Media Relations - The trainee should be given the opportunity to explore the role of the press in a free society and the relationship of the police to mass media.

15. Social Disorganization - Discussions in this session should concern mental illness, sexual deviation, and alcoholism, with special emphasis directed to the emotional and behavioral patterns of development of those persons suffering from such psychological disorders.

16. Correctional Institution Tour - The trainee should receive an on-site exposure to what it's like "on the inside" of a prison.

17. Panel Discussion (Experienced Officers) - Would afford the trainee with experienced perspective of the material covered in Community-Police Relations.

18. Conflict Management Section - Recruits will be apprised of the successful techniques used by the unit in handling emotional situations without using physical violence.

19. Career Development Counseling - Recruits will be urged to appreciate the need for career development; identify target career goals; build individual continuing developmental plans.

CLOSURE OF SPECIAL TRAINING OF POLICE RECRUIT

Training must be given with the sole idea that the recruit is a servant of the people. As such he/she has a duty to provide for the expectations and carry out the commands (i.e., LAWS) of the people.

Training must be a continual part of his/her job as long as that person is sworn to carry out the mandate of the people.

During my two year tenure with the California Youth Authority, I visited well over 80 cities throughout California. My charge consisted of developing a proactive, rather than a reactive, attitude toward crime with high level administrators including mayors, boards of supervisors, city managers, police chiefs, sheriffs, and any other policymakers. I testified before several Senate panels and developed in-service training to police, social workers, probation officers and other humanitarians. I also did assessment studies for communities on violent crime and gangs - their causes and possible solutions. As a result of these studies, I have classified three kinds of communities. They are as follows:

> Community I - This is a community that is reactive in nature. They are strong believers in enforcement. Much hatred exists; It is a city impregnated with "the rights" and "the wrongs"; the "have" and the "have nots". This city discourages "outside" intervention or support. This community will continue in its present course until a complete change of personnel and personnel practices, commencing from elected officials to the chief of police, is made.
>
> Community II - This is a community that denies any and all social problems, but is quick to point to others as a source of problems. Gang activity, dramatic rises in crime, complaints against the police, etc., are regarded as "unusual occurrences" that will somehow "go away" They don't solicit assistance and generally operate in a negative traditional manner. If this community continues on its present course, will soon be identified as a community that will be forced to review its practices. Adjustment will be slow but forthcoming.

Community III - This is an enforcement-prevention conscious community. City officials work with the community as partners and share equal "ownership" of its liabilities and assets. This community welcomes outside scrutiny and shares equally with anyone, even if the feedback is negative in nature. They solicit assistance and search diligently for a better solution. This is a mature community, responsive to the people it serves.

Traditionally, the police function has nearly always directed its effort in a reactive manner rather than a "before the fact". This major effort by law enforcement is of primary importance because the police must encounter and improve emergency, criminal, and other police activities after they have occurred. However, with regard to criminality, this is the most expensive and most often the least effective manner in dealing with this problem.

Cost effectiveness is a major consideration in reducing crime. The cost of apprehending and processing a criminal through the justice system is extremely high; and, in most cases, rehabilitative success is minimal. I strongly feel that police efforts should be directed more into the preventive area rather than "putting out fire".

Police and Social Services should flow together rather than against one another, which is too often the case. Efforts in behavior modification and prevention at an early age should be continually explored. Crimes and disturbances which police are able to prevent, serve the community more effectively than expending resources after the act has occurred. The police will never be able to be primarily proactive; however, the more successful they are in prevention, the more effective they will be in their overall charge.

In matters where citizens allege violations of civil rights, en masse, by the police, it may be fairly stated that communities contribute to the circumstances which make such violations possible. For example, when police officers are functioning in an atmosphere where people perceive them as the "enemy," confrontation will occur, creating a total lack of credibility and an increase in police complaints.

In summary, we must all accept full responsibility for the pluses and minuses of police. We must ask ourselves; have we as Americans, as Hispanics, contributed to our present dilemma? Better yet, what are we doing about the future? According to current statistics, "Our day is yet to come". Will we fumble the ball? Or, will we score? It's up to us ...

Submitted by
Louis Moreno

APPENDIX

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STATEMENT OF PHILOSOPHY OF POLICE DEPARTMENT ADMINISTRATION

Every community, regardless of size or makeup, is unique, even in our metropolitan areas that are consolidated and contract for law enforcement services. Individual communities must have tailored operations to meet the needs of the people.

In so doing, the police must be responsive to the community it serves. This can be manifested not only by interaction with the rest of the local governmental structure, but also by interaction with the community itself. Thus local police operations are a sub-unit of local government and as such are accountable to that local government for carrying out the law enforcement responsibility.

Traditionally, the police function has nearly always directed its effort in a reactive manner rather than a "before the fact". This major effort by law enforcement is of primary importance because the police must encounter and improve emergency, criminal, and police activities after they have occurred. However, with regard to criminality, this is the most expensive and most often the least effective in dealing with this problem. This cost effectiveness is a major consideration in reducing crime. The cost of apprehending and processing a criminal through the judicial system is extremely high, and, in most cases, the rehabilitative success is minimal. I strongly feel that police effort should be directed more into the preventive area rather than "putting out fires". Police and Social Services should flow together, rather than flow against, which is too often true in our business. Effort in behavior modification at an early age and effort in hardening the crime target should be continually explored. Crimes and disturbance that the police are able to prevent serve the community more effectively rather than expending resources after the act has occurred. The police will never be able to be primarily proactive; however, the more successful they are in prevention, the more effective they will be in their overall charge.

In view that the criminal element is very mobile, law enforcement should meet this challenge whenever possible by combining efforts in such things as major crime task forces, multi-agency communications system, helicopter programs, and many other services that can be effectively integrated with other cities and communities. This is often beyond the resources of one small or medium-sized agency to successfully handle the ever-moving criminal.

The management style that I find most effective is participative management in a management-by-objective environment. This style demands a strong leader to accomplish three main management benefits. They are:

1. Directing the total effort toward the organization's objectives so that all personnel will be able to apply the guidelines that will help their decision-making when encountering the myriad of law enforcement activities that are too numerous

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to write specific directions for.

2. Allowing for more comprehensive input, thus contributing the experiences of everyone through exposing and training more people in the making of decisions.

3. Allowing a free flow of communication throughout the entire structure so that the first line personnel will not only be aware of the "why" of direction, but be given the opportunity to have input into the decision governing his daily operations.

(s) Louis W. Moreno

Summary
by:

Fernando Hernandez, Ph.D.

Final Policy Recommendations

Workshop Participants

POLICE WORKSHOP - SUMMARY

The workshop on Police proved to be one which provoked intense discussion and wide ranging dialogue. The role of police in Hispanic communities has often been less than positive. Two of the workshop papers raised a number of criticisms on police/Hispanic community relations. Nevertheless the workshop participants were able to wrestle with the many sensitive issues that were raised because of the sincere concern of those participating. Moreover, the welcome inclusion of former New York Police Commissioner Patrick Murphy as an active participant added a welcome perspective to some of the contentiousness that resulted among workshop members from time to time. His contributions were timely and valued by all.

Four Major areas of concern were raised: Affirmative Action, Police Accountability, Use of Deadly Force, and Civilian Control. In the areas of Affirmative Action, Policy Accountability and the Use of Deadly force there was little disagreement among participants. On the Civilian Control issue, however, discussions were long and intense. The major issue of contention had to do with civilian review boards and initiation of investigations into alleged police misconduct. What has been adopted by the conference in this area was the center of much debate and reflects the willingness of all sides to compromise. Nevertheless it appears that this area will remain the subject on which there will continue to be disagreement for many years to come.

Finally a word on the conference itslef. In all respects it was generally agreed by the workshop participants that it was superbly organized.

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Much thanks and recognition is due to InterAmerica's professional staff. It was well organized and brought together some of the best minds in the nation to discuss a subject of gargantuan proportions. While these problems identified in the conference still remain, the conference was a positive step in their resolution.

POLICE WORKSHOP - RECOMMENDATIONS

AFFIRMATIVE ACTION GROUP

POLICY STATEMENT

Affirmative Action:

To enhance the police service to the Hispanic community. There is a need for more Hispanic police that are bilingual and bicultural. Departments need to reflect the communities which they serve. It should be recognized that the Hispanic police officer often faces discrimination in recruitment, retention and promotion as is the case in other areas of the life of the Hispanic community.

RECOMMENDATIONS:

To develop local Hispanic task forces including Hispanic Law Enforcement officers and community members to meet with local elected officials and police administrators to express the concerns and desires of the Hispanic community dealing with affirmative action and police service to the Hispanic community.

Local Suggestions for Local Task Force:

Eliminate negative attitudes pertaining to affirmative action and to insure that career of Hispanic officers is secured by assigning high potential Hispanic officers in positions or assignments that will enhance promotional opportunities. (A major problem exists in the lack of Hispanic officers in command positions).

Insure that in high Hispanic population areas that Hispanic culture is being taught at the police academy to familiarize all police officers with the Hispanic culture. Includes staffing Spanish surnamed officers in academies. May also include teaching basic Spanish to recruits.

Appoint Hispanic Affirmative Action officers in Police Departments where a need exists (i.e., high Hispanics population areas).

Establish affirmative action guidelines to fit the area or communitu

Alleviate marginality and isolation problems of Hispanic officers.

THE FEDERAL LEVEL

Establishment of a federal task force funded by the Department of Labor to monitor, evaluate, and assess the imapct and implementation of Hispanic affirmative action programs complying with a model program as developed by local task forces:

Suggestions for Federal Task Force:

The federal task force should be comprised of Hispanics from LEAA, Department of Justice, Department of Labor, National Association of Latino Elected and Appointed Officials and other Hispanics interest groups.

LEAA and the federal task force should develop methods to collect data on Hispanic communities.

a) numbers

b) location

LEAA and Department of Labor should fund research on Hispanic police officers in terms of:

- a) recruitment
- b) retention
- c) promotion
- d) why they leave departments

CONCLUDING STATEMENT:

The implementation of these recommendations will be a catalyst in improving police service to the community.

The federal task force will also function to identify and remedy other areas of need by both Hispanic police officers and the Hispanic community.

POLICE ACCOUNTABILITY

The conference recommends that federal guidelines be developed pertaining to citizens complaints against police

The conference goes on record supporting the development of a uniform reporting process for complaints against police. LEAA should be charged with the development of guidelines and the uniform reporting system.

The conference goes on record in recommending to both the Justice Department and local law enforcement agencies that:

1. All complaints by citizens against law enforcement agencies shall be investigated by that agency to conclusion; and that all complainants be informed in writing as to the final outcome of the investigation.

2. All complaints whether sustained or rejected shall be documented, filed and maintained for a minimum period of two (2) years; and that these complaints remain a matter of public record open for inspection by anyone having a "right to know" as prescribed by federal statutes.

Quarterly reports of complaints received and investigated shall be forwarded to the U.S. Department of Justice and the Department shall complete the audit within 30 days. The complete audit will be made available to federal, State and local agencies "having the right to know" as provided by federal statute such as the Attorney General, federal and state, grand juries, legislative bodies, federal, state and local.

The Chief law enforcement officer shall be held responsible for compliance with federal guidelines regarding citizens complaints.

Legislation should be developed at the federal level to provide for:

1) Criminal prosecution
2) Civil penalties
3) Loss of federal funding for failure to comply with the federal guidelines regarding citizens complaints.

DEADLY FORCE

1. We recommend that the following uniform standard concerning the use of deadly force be adopted by all law enforcement agencies and that such standard be written, published and made available to all police officers:

   1. Deadly Force shall not be used except:

      a) In self-defense or defense of others; or

b) To apprehend a felon who has used deadly force in the commission of a crime and who presents a substantial risk of harm to others if not immediately apprehended and, only after all other reasonable means of apprehension have been exhausted.

B. We recommend that standard written guidelines on the use of non-lethal force which may be reasonably used in effecting an arrest be adopted by all law enforcement agencies and that such guidelines be published and made available to all police officers and communities.

C. We recommend that penalties for the violation of the regulations on the use of deadly force and non-deadly force be established in clear, concise language and that they be made available to all police officers.

D. We recommend that the all state legislatures, as well as all law enforcement agencies, adopt the above recommendations on the use of deadly force and non-deadly force.

E. We recommend that studies on the use of non-lethal weapons be continued.

F. Any police shootings that result in injury or death should be referred to the grand jury for investigation.

CIVILIAN CONTROL

The conference goes on record in underscoring the basic precept that law enforcement agencies be under civilian control. The position has been taken to ensure law enforcement executives some of whom may function contrary to this precept, that the people, through the median of law, have control over the police function.

Whereas civilian control is accepted by the community and law enforcement, the mechanism for control be systematically and continually re-evaluated to accountability to the citizens.

We recommend that a standardized method of lodging citizens complaints be so designed as to not inhibit the filing of citizens complaints of police misconduct.

RESOLUTION ON CIVILIAN CONTROL AND INTELLIGENCE GATHERING

1) That those LEAA guidelines adopted in 1978 which prohibit LEAA and federal funding to law enforcement agencies involved in political intelligence gathering on constitutionally protected activity be vigorously enforced by the Department of Justice utilizing surprise annual audits of law enforcement agencies.

2) That LEAA or the Department of Justice shall establish grants and funding for public entities who establish appropriate disclosure laws following the guidelines of the Freedom of Information Act.

3) That the Department of Justice shall prosecute any violations of the civil and constitutional rights of civilians by:

   a) attempts to incite any person to commit unlawful violent activity; or
   b) communication of false or defamatory information; or
   c) disrupt any lawful activity.

The conference goes on record that all complaints of police misconduct must be reviewed by an independent body.

The conference goes on record that we are against law enforcement misconduct involving intelligence gathering.

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* * * * *

"PUNISHMENT FOR LATINOS, IS IT FAIR?"

Presented by:

Steven P. Sanora, J.D.
Professor, Peoples College of Law
Los Angeles, California

"LANGUAGE BARRIERS IN THE CRIMINAL JUSTICE SYSTEM:
A LOOK AT THE FEDERAL JUDICIARY"

Presented by:

Carlos Astiz, Ph.D.
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"IMPACT OF THE CRIMINAL JUSTICE SYSTEM ON HISPANICS"

Presented by:

John Carro
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PUNISHMENT FOR LATINOS, IS IT FAIR?

By:

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Prepared for:

National Hispanic Conference
on
Law Enforcement and Criminal Justice

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Washington, D.C.
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I realize it is becoming a cliche, but the only place Latinos receive more than equal opportunity is in the judicial system. I am not referring to the dramatic rise in Latino participation in the judiciary and the bar, but rather to the escalating numbers of Latinos that are incarcerated.[1]

The research which lead up to this paper has dealt with the Latino population of California. The task of researching statistics on this subject is becoming increasingly simplified due to the local governments' desire to document racial composition of alleged criminality. The most distressing trend in this data is that Latinos are initially more likely to be arrested and then more likely to be incarcerated than any other ethnic group.[2]

The numbers began their documented trend upward as far back as the end of World War II.[3]

California officials were concerned that many Hispanic veterans would be returning from the war, expecting to find employment opportunities available to them since they had proved, by fighting for the country, that they were as American as anyone else.

During World War II, J. Edgar Hoover, Director of the Federal Bureau of Investigation, warned about the effects of the end of the war on the prison systems. He warned about conditions that would fill the prisons following the War. In March 1946, he wrote:

> It is true that a crime wave usually follows every war but this one we face today may engulf us with unprecedented rapidity and magnitude because of some new factors in our social life. Never have there been such revolutionary changes in our economic

> system or so many threats to its stability. Subversive forces are powerful and active. If further unrest is stirred, if strikes continue and unemployment becomes widespread, hundreds of thousands of persons who normally would not defy law and order may join the ranks of crime in disgust or to provide for their families.[4]

It is important that we examine carefully what Mr. Hoover was saying. The effect of the ending of the war is that a crime wave will swallow up America. He points out that this is a historical fact following every war. The effect of the crime wave is a threat to our economic system. Mr. Hoover, as the Director of the Federal Police System, is concerned with maintaining stability in society. In order to maintain stability in society, he says we must be prepared to handle this crime wave. The method utilized to achieve these ends was the prison system. He suggested that we build more prisons now in order to control the anticipated threats to the stability of society. He continued by writing:

> The menace of the crime wave is intensified by the tragic fact that we are ill-prepared to deal with it. The jails and prisons of the nation--the dikes against the criminal flood--are in many cases dilapidated, antiquated and badly managed. Many a prison guard is of lower intelligence than the criminals he guards and many a warden appointed by venal politicians has no more qualifications for rehabilitating and disciplining hardened criminals than the captain of a garbage scow.[5]

In the remainder of his article, Mr. Hoover provides examples to substantiate his comments.

Here, Mr. Hoover is calling for the professionalization of corrections in society. He points out the present inadequacies of corrections and attempts to show how corrections will be unable to cope with the anticipated rise in prison population. Unfortunately, Mr. Hoover is unwilling or unable to discuss methods to avoid the anticipated problems from developing. His solution to these problems is simply to urge the building of new prisons. He concludes by saying:

> Build up the dikes against the coming flood, or you will pay the price. Don't let the budget officials slight expenditures for jails and prisons, any more than you would let them slight the police. We must be interested more in the safety of society than in the convenience of a criminal or of budgetmaker. See to it that jailers, wardens, and guards are professionals in their field-remakers of men, but stern and skilled guardians of their prisoners.

Mr. Hoover was not alone in his predictions of the future. Another writer also pointed out that the end of the war would mean a rise in crime. Furthermore, he added that prisons are presently ill-prepared to handle the anticipated phenomena and the time to build and expand corrections was now. He made this clear by writing:

> When the global cauldron of death and war cracks, twenty-five million war workers and ten million war veterans will spill out on America.... In America, there will be, as we all know, a period of confusion and readjustment.... There will be criss-cross migration, and the social problem of crime will be enormous. After all wars, jails and prisons refill and become overcrowded. The time to prevent such tragedy is now.[6]

Latinos being of the lower economic strata, filled cells, not the scarce jobs available.

The approach taken by California officials was to push for the construction of new facilities to accommodate the influx.

Little or no thought was given to expand the economy to develop job opportunities. Any expansion that was undertaken excluded Latinos with their limited job skills.

Economics dictated that it was simpler to jail an individual than give him a job. When an individual was accused of a crime, the alternatives were, where, and for how long, to put him away, not, if to put him away in the first place.

Unfortunately for state officials, they could not produce sufficient facilities via bond issues to meet the ever increasing demands, and thus, they transferred that task to local government officials.[7]

Local officials faced the same economic judicial dilemma. Unemployed, arrested Latinos were incarcerated, and not given opportunity to break the "arrested-jailed-released-re-arrested" syndrome.[8]

This was continued as the standard operating procedure for the judicial system, with no consideration given to the rehabilitation of prisoners, until the Latino population dramatically rose. This change took place in the 60's, along with increased drug activity outside the minority communities.

This increased activity resulted in the inevitable arrest of Whites who were not of the same socio-economic strata as Latinos. The approach utilized for Latinos between the end of World War II and the 60's could not be utilized for the new unanticipated entrant into the judicial system. Arrests for Whites began to increase but arrests for Latinos increased at a greater rate than their ratio of growth of their population.[9]

This can be accounted for by the fact that the response by law enforcement to increase drug use in the White communities was to multiply police presence in Latino communities five-fold.

A square mile in a Latino community had 20 vehicles patrolling, while in the same square mile in the White community there existed 1½ vehicles.

Alternative methods to incarceration were created by the introduction of Whites into the judicial system. It only became a necessity to develop alternatives when White-middle class individuals were being arrested for crimes that were previously apparently within the exclusive domain of Latinos or Blacks.

It was amazing to see what creative programs were spawned when their impetus for development was occasioned by the new White influx into the judicial system.

California developed a diversion program which provided that first-time drug users could attend classes on drug abuse in lieu of criminal prosecution. The requirements for acceptance into diversion was that the accused must be crime free in regards to prior drug use and be an individual who could benefit by attending these drug abuse classes.

The first criteria was objective, in that one is either free from past drug-police contact, or one is not. The second criteria, was blatently discretionary. It, in effect, resulted in Latinos being excluded from this program. The most common exclusionary factor was failure to perform satisfactorily while on probation. Due to the increased numbers of Latinos arrested, inevitably many were placed on probation but these were by and large for misdemeanor offenses.[11] The new arrests for a drug related offenses meant that one was technically in violation of the summary grant of probation, and thus, had unsatisfactorily performed on probation. But for the fact of being on summary probation, diversion would have been available. The unavailability of diversion compounded problems for Latino defendants: One, they were in violation of probation; and two, since diversion was not available, they were likely to be found guilty of a drug offense, even though minor in nature. A conviction while on probation mandated incarceration so that a cycle of "arrest-incarceration-release-and-re-arrest" is more often repeated for Latinos, while not for others who may utilize diversion.

Another innovative technique developed, was the work-furlough program. This program permitted a convicted person to maintain his job throughout the work week while sleeping in the county jail at night and on weekends. There were people that could be excluded from this program; Those, of course, were those convicted of drug related offenses, any jobs held prior to their convictions were lost. They were forced back into a circular life of crime to release. This program was available only to those who received a judgment of local custody. A determining factor in concluding if an individual should receive local time was whether or not he could maintain employment while incarcerated. If he was convicted for an offense that precluded him from the work-furlough program, then he was incarcerated in state prison and could not take local positions from those that could benefit from the programs established.

The third alternative developed in California was a live-in program at non-custodial facilities that provided counseling and twenty-four hour a day observation. This was once again for those individuals that had not been incarcerated previously, nor been exposed to any counseling programs. It provided a means for Whites to avoid jail even though their offense may have been serious and usually would have resulted in extended incarceration. These programs became well known so eventually, Latinos and Blacks began to avail themselves of this alternative. When Latinos and Blacks began to exercise this alternative these programs then, and only then, were labeled as escape mechanisms for people who should obviously be jailed.

These programs also began to be looked upon as locations where new crimes took place, or conspiracies were created for the expansion of criminal activity.

The alternatives heretofore described, provided a method for Whites to escape incarceration. Even though there was rampant overcrowding in the state prison system, the answer was not to release greater numbers of individuals, but it was to make them spend an increased amount of time at a local institution.

In regards to felonies, the only means by which to give individuals local time was to give them probation. Probation gives the impression that one is receiving a great benefit. However, one condition of said probation was, for Latinos at least, that the maximum time permitted, to wit, one year, be served. The solution for officials when dealing with Latinos is to give them maximum time even when appearing to give them a break. The break afforded Latinos is, be it not for overcrowding in state prisons, they would not be in local custody.

If you are ultimately sent to the state prison, you can expect the maximum time allowable. California has implemented the Determinant Sentencing Law which provides for a mid-base term which all people start off with in computing their sentence i.e., 5 years. Then the Court must decide whether or not the term should be aggravated to the high term of 7 years or mitigated to a low term of 3 years. Aggravation is most often invoked in those instances where a person has a prior record, all too often common among Latinos. Mitigation is meant to be for first-time offenders and persons with opportunities awaiting them either through education or employment.

CONCLUSION

The data tables attached document discussions previously set forth that reflect the most recent data available. Further, documentation can be ascertained through a greater willingness on the part of law enforcement agencies to disclose material related to arrest and disposition by race. The greatest shortcoming of the data compiled is that it does not include misdemeanor arrests initiated by the Los Angeles Police Department, the largest in California and the one with the greatest Latino contact.

Is there any hope for Latinos? The solutions are relatively simple but they are premised on the acceptance by public officials that Latinos should be afforded equal protection as guaranteed by the Constitutions of California and the United States.

-First, there should be an increase in programs that mandate education as a condition of probation.

-Secondly, if a person is sent to state prison, it should be to the facility nearest to his family in order to maintain family contact and provide for emotional support.

-Thirdly, lawyers that deal with Latinos should be scrutinized to determine if they are providing quality service rather than quantitative service. i.e., more cases with little or no trials.

-Lastly, the recognition that Latinos have been incarcerated historically because of race and that it is the duty of government to rectify those past inequities by establishing programs that will change history and create a new and positive direction.

Submitted by
Steven P. Sanora

ADULTS PLACED ON PROBATION, JANUARY 1 - DECEMBER 31, 1978
Type of Court and Percent Distribution by Sex, Race, and Age

	Total		Type of Court: Superior court		Type of Court: Lower court	
	Number	Percent	Number	Percent	Number	Percent
Sex						
Male	60,032	83.5	19,808	84.9	40,224	82.8
Female	11,736	16.3	3,465	14.8	8,271	17.0
Unknown	155	0.2	66	0.3	89	0.2
Race						
White	39,511	54.9	12,133	52.0	27,378	56.4
Mexican-American	12,848	17.9	3,691	15.8	9,157	18.8
Negro	13,564	18.9	5,991	25.7	7,573	15.6
American Indian	472	0.7	136	0.6	336	0.7
Oriental	321	0.4	104	0.4	217	0.4
Filipino	114	0.2	47	0.2	67	0.1
Other	877	1.2	287	1.2	590	1.2
Unknown	4,216	5.9	950	4.1	3,266	6.7
Age						
Under 20	7,240	10.1	2,301	9.9	4,939	10.2
20-24	22,066	30.7	8,497	36.4	13,569	27.9
25-29	14,634	20.3	5,177	22.2	9,457	19.5
30-34	9,245	12.9	2,932	12.6	6,313	13.0
35-39	5,897	8.2	1,659	7.1	4,238	8.7
40-44	3,963	5.5	999	4.3	2,964	6.1
45-49	3,009	4.2	623	2.7	2,386	4.9
50 and over	5,268	7.3	978	4.2	4,290	8.8
Unknown	601	0.8	173	0.7	428	0.9
Median age*	27.2		25.8		27.9	
Total	71,923	100.0	23,339	100.0	48,584	100.0

*Median ages are based on known ages only.

Notes: Percents may not total 100.0 due to rounding.
The median is the midpoint of a set of numbers arranges in order of magnitude and is used instead of the mean (average) because it is not as affected by extremes.

ADULT AND JUVENILE ARRESTS REPORTED, 1978
RACE BY SPECIFIC OFFENSE
STATEWIDE

OFFENSE	TOTAL	ADULT TOTAL	WHITE	MEXICAN AMERICAN	NEGRO	OTHER	JUVENILE TOTAL	WHITE	MEXICAN AMERICAN	NEGRO	OTHER
FELONY											
HOMICIDE	2530	2226	734	652	758	82	304	74	136	89	5
MANSL N/VEH	114	105	59	24	20	2	9	8	1	0	0
MANSL VEH	430	398	220	114	53	11	32	18	8	4	2
FORCIBLE RAPE	3613	3075	1122	712	1156	85	538	174	123	236	5
ROBBERY	22359	16058	5137	3697	331	331	6301	1496	1556	3089	160
ASSAULT	43011	34674	14420	9355	9878	1021	8337	3105	3072	1966	194
KIDNAPPING	1995	1768	726	446	567	29	227	75	64	81	7
BURGLARY	81117	40150	18662	9455	11366	667	40967	23640	7843	8650	834
THEFT	42291	29107	13678	5268	9547	614	13184	7333	2333	3236	282
M-VEH THEFT	32035	17632	7107	4313	5900	312	14403	6745	3834	3446	378
FORG-CKS-CC	10771	9703	5082	981	3443	197	1068	719	126	208	15
NARCOTICS	19651	18120	7643	4372	5913	192	1531	794	448	272	17
MARIJUANA	17397	12891	8940	1546	2207	198	4506	3252	536	644	74
DANGER DRUGS	17934	15800	7839	2921	4825	215	2134	1123	506	471	34
OTH DRUG VIO	2464	2257	1378	243	605	31	207	140	44	21	2
LEWD & LASCV	2114	1676	1021	370	243	42	438	253	78	97	10
OTHER SEX	1888	1613	880	242	456	35	275	160	50	64	1
WEAPONS	10334	7833	3802	2071	1774	186	2501	1049	956	412	84
DRNK-DRIVING	4920	4690	2808	1300	481	101	230	163	59	0	8
HIT-AND-RUN	1308	1171	455	511	179	26	137	70	51	14	2
ESCAPE	1312	1056	675	226	141	14	256	183	37	29	7
BOOKMAKING	1518	1516	437	69	979	31	2	0	0	2	0
ARSON	2120	1038	586	160	262	30	1082	750	176	130	26
OTH FELONIES	11421	9400	4809	1871	2485	235	2021	1071	475	421	54
TOTAL FELONY	334647	233957	108220	50919	70131	4687	100690	52395	22512	23582	2201
OTHER RPT OFF											
FEDERAL OFF	10196	9676	503	8945	135	93	520	97	400	19	4
D/S WARR-FEL	7223	6905	4225	993	1571	116	318	230	48	37	3
PROB/PAR-FEL	2217	2114	1080	485	509	40	103	69	12	13	9

ADULT AND JUVENILE ARRESTS REPORTED, 1978
RACE BY SPECIFIC OFFENSE
STATEWIDE

OFFENSE	TOTAL	TOTAL	WHITE	MEXICAN AMERICAN	NEGRO	OTHER	JUVENILE TOTAL	WHITE	MEXICAN AMERICAN	NEGRO	OTHER
MISDEMEANOR											
MANSL-MISD	82	71	42	18	10	1	11	8	3	0	0
ASSLT-BATT	48766	37244	20415	8186	7619	1024	11522	6077	2931	2193	321
PETTY THEFT	110127	60750	31214	14397	12373	2766	49377	29692	8690	9135	1860
OTHER THEFT	4665	3915	2465	380	995	75	750	511	138	93	8
CKS/CRD-CDS	1875	1829	1304	118	371	36	46	30	7	9	0
MARIJUANA	35424	22129	14926	3381	3483	339	13295	9900	1889	1321	185
OTHER DRUGS	33394	30686	13396	9211	7619	460	2708	1286	932	432	58
INDECENT EXP	2300	1942	1339	331	237	35	358	262	59	28	9
ANNOY CHILD	1480	1045	626	191	181	47	435	143	120	121	51
OBSCENE MATT	69	66	59	4	3	0	3	2	1	0	0

DISPOSITION OF ADULT FELONY ARRESTS, 1978
TYPE OF DISPOSITION BY PERCENT DISTRIBUTION OF RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE NEGRO	OTHER	UNKNOWN
Disposition of Felony Arrests	100.00	47.12	19.83	29.99	1.67	1.39
Law Enforcement Releases	100.00	37.24	22.54	38.21	1.47	.54
Complaints Denied	100.00	38.69	21.43	36.92	1.35	1.61
Complaints Filed	100.00	49.93	19.19	27.67	1.75	1.46
Misdemeanor	100.00	50.77	19.76	26.59	1.73	1.16
Felony	100.00	49.16	18.68	28.66	1.77	1.74
Lower Court Dispositions	100.00	51.22	19.26	26.43	1.80	1.29
Dismissed	100.00	49.67	18.17	28.81	1.94	1.42
Acquitted	100.00	46.23	20.32	29.77	2.63	1.05
Convicted	100.00	51.95	19.73	25.35	1.73	1.24
Guilty Plea	100.00	52.04	19.76	25.25	1.72	1.24
Jury Trial	100.00	47.77	18.50	30.45	2.36	.92
Court Trial	100.00	48.75	18.75	29.17	1.88	1.46
Sentence	100.00	51.95	19.73	25.35	1.73	1.24
Youth Authority	100.00	46.88	18.75	34.38	.00	.00
Probation	100.00	56.51	18.28	21.62	1.93	1.63
Probation with Jail	100.00	48.06	20.19	29.09	1.64	1.01
Jail	100.00	46.03	24.05	27.47	1.48	.96
Fine	100.00	63.17	15.43	18.32	1.83	1.25
Other	100.00	59.60	16.16	22.22	1.01	1.01
Superior Court Dispositions	100.00	46.94	19.03	30.53	1.64	1.86
Dismissed	100.00	41.37	18.49	35.75	1.73	2.66
Acquitted	100.00	34.58	19.05	41.63	2.09	2.64
Convicted	100.00	48.02	19.09	29.54	1.61	1.73
Original Plea of Guilty	100.00	56.23	17.51	22.72	1.59	1.94
Change Plea to Guilty	100.00	44.55	19.81	32.64	1.47	1.54
Jury Trial	100.00	37.26	21.83	36.34	2.59	1.97
Court Trial	100.00	34.95	17.65	43.72	2.01	1.66
Trial by Transcript	100.00	29.86	26.62	41.37	.36	1.80

DISPOSITION OF ADULT FELONY ARRESTS, 1978
TYPE OF DISPOSITION BY PERCENT DISTRIBUTION OF RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE	OTHER	UNKNOWN
				NEGRO		
Sentence	100.00	48.02	19.09	29.54	1.61	1.73
Death	100.00	100.00	.00	.00	.00	.00
Prison	100.00	42.00	21.52	32.11	1.80	2.57
Youth Authority	100.00	40.62	19.32	37.85	1.50	.71
Probation	100.00	53.59	14.64	27.82	2.00	1.95
Probation with Jail	100.00	50.20	18.26	28.72	1.46	1.35
Jail	100.00	41.51	24.08	30.91	1.71	1.80
Fine	100.00	50.62	16.05	28.40	3.70	1.23
CRC	100.00	44.18	31.52	21.65	.51	2.15
MDSD	100.00	68.00	13.78	12.89	2.67	2.67
Other	100.00	66.67	33.33	.00	.00	.00

NOTE: It is estimated that statewide data are 35 percent underreported. Individual counties may vary.

DISPOSITION OF ADULT FELONY ARRESTS, 1978
TYPE OF DISPOSITION BY RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE	OTHER	UNKNOWN
				NEGRO		
Disposition of Felony Arrests	150004	70681	29743	44990	2498	2092
Law Enforcement Releases	14596	5436	3290	5577	214	79
Complaints Denied	20989	8121	4497	7750	283	338
Complaints Filed	114419	57124	21956	31663	2001	1675
Misdemeanor	54399	27620	10747	14464	939	629
Felony	60020	29504	11209	17199	1062	1046
Lower Court Dispositions	79853	40897	15379	21109	1435	1033
Dismissed	24263	12051	4408	6990	470	344
Acquitted	571	264	116	170	15	6
Convicted	55019	28582	10855	13949	950	683
Guilty Plea	53777	27984	10624	13577	923	669
Jury Trial	762	364	141	232	18	7
Court Trial	480	234	90	140	9	7
Sentence	55019	28582	10855	13949	950	683
Youth Authority	32	15	6	11	0	0
Probation	18311	10347	3348	3958	353	305
Probation with Jail	22799	10958	4604	6633	374	230
Jail	8755	4030	2106	2405	130	84
Fine	5023	3173	775	920	92	63
Other	99	59	16	22	1	1
Superior Court Dispositions	34566	16227	6577	10554	566	642
Dismissed	3759	1555	695	1344	65	100
Acquitted	908	314	173	378	19	24
Convicted	29899	14358	5709	8832	482	518
Original Plea of Guilty	11426	6425	2001	2596	182	222
Change Plea to Guilty	14960	6664	2963	4883	220	230
Jury Trial	2391	891	522	869	62	47
Court Trial	844	295	149	369	17	14
Trial by Transcript	278	83	74	115	1	5

DISPOSITION OF ADULT FELONY ARRESTS, 1978
TYPE OF DISPOSITION BY RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE NEGRO	OTHER	UNKNOWN
Sentence	29899	14358	5709	8832	482	518
Death	1	1	0	0	0	0
Prison	6888	2893	1482	2212	124	177
Youth Authority	1268	515	245	480	19	9
Probation	4051	2171	593	1127	81	79
Probation with Jail	15479	7771	2827	4446	226	209
Jail	1113	462	268	344	19	20
Fine	81	41	13	23	3	1
CRC	790	349	249	171	4	17
MDSD	226	153	31	29	6	6
Other	3	2	1	0	0	0

NOTE: It is estimated that statewide data are 35 percent underreported. Individual counties may vary.

ADULTS PLACED ON PROBATION, JANUARY 1 - DECEMBER 31, 1978
Type of Court and Percent Distribution by Sex, Race, and Age

			Type of Court			
	- - - Total - - -		- Superior court -		- Lower court -	
	Number	Percent	Number	Percent	Number	Percent
Sex						
Male	57,921	79.2	18,736	82.4	39,185	77.8
Female	11,392	15.6	3,134	13.8	8,258	16.4
Unknown	3,776	5.2	866	3.8	2,910	5.8
Race						
White	41,459	56.7	12,018	52.9	29,441	58.5
Mexican-American	12,762	17.5	3,626	15.9	9,136	18.1
Negro	13,705	18.8	5,956	26.2	7,749	15.4
American Indian	510	0.7	156	0.7	354	0.7
Oriental	306	0.4	91	0.4	215	0.4
Filipino	132	0.2	37	0.2	95	0.2
Other	610	0.8	216	1.0	394	0.8
Unknown	3,605	4.9	636	2.8	2,969	5.9
Age						
Under 20	7,249	9.9	2,265	10.0	4,984	9.9
20-24	22,787	31.2	8,416	37.0	14,371	28.5
25-29	14,959	20.5	5,129	22.6	9,830	19.5
30-34	9,046	12.4	2,824	12.4	6,222	12.4
35-39	5,890	8.1	1,529	6.7	4,361	8.7
40-44	4,094	5.6	943	4.1	3,151	6.3
45-49	3,267	4.5	673	3.0	2,594	5.2
50 and over	5,284	7.2	839	3.7	4,445	8.8
Unknown	513	0.7	118	0.5	395	0.8
Median age*	27.1		25.6		27.9	
Total probation grants	73,089	100.0	22,736	100.0	50,353	100.0

*Median ages are based on known ages only.

Notes: Percents may not total 100.0 due to rounding. The data in this table are not comparable with those previously presented in the Bureau of Criminal Statistics publication Crime and Delinquency in California, 1977 - Part II because of adjustments made to Alameda County's data. The median is the middle of a set of numbers arranged in order of magnitude and is used instead of the mean (average) because it is not as affected by extremes.

DISPOSITION OF ADULT FELONY ARRESTS IN 57 COUNTIES, 1977
TYPE OF DISPOSITION BY RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE NEGRO	OTHER	UNKNOWN
Disposition of Felony Arrests	145525	72437	26038	41678	2653	2719
Law Enforcement Releases	12831	5229	2660	4658	180	104
Complaints Denied	20141	8224	3961	7491	317	148
Complaints Filed	112553	58984	19417	29529	2156	2467
Misdemeanor	54294	28815	9950	13700	981	848
Felony	58259	30169	9467	15829	1175	1619
Lower Court Dispositions	79407	42413	14072	19928	1548	1446
Dismissed	25081	13015	4024	6908	526	608
Acquitted	755	357	142	229	13	14
Convicted	53571	29041	9906	12791	1009	824
Guilty Plea	52230	28365	9637	12448	984	796
Jury Trial	733	364	150	188	13	18
Court Trial	608	312	119	155	12	10
Sentence	53571	29041	9906	12791	1009	824
Youth Authority	55	30	12	10	0	3
Probation	18714	10941	3131	3968	363	311
Probation with Jail	19757	10157	3817	5093	383	307
Jail	9528	4525	2102	2603	162	136
Fine	5280	3269	802	1047	98	64
Other	237	119	42	70	3	3
Superior Court Dispositions	33146	16571	5345	9601	608	1021
Dismissed	3618	1623	613	1147	69	166
Acquitted	920	379	151	333	16	41
Convicted	28608	14569	4581	8121	523	814
Original Plea of Guilty	7796	4746	1199	1397	138	316
Change Plea to Guilty	16855	8088	2733	5353	289	392
Jury Trial	2798	1237	476	929	76	80
Court Trial	910	386	139	351	16	18
Trial by Transcript	249	112	34	91	4	8

DISPOSITION OF ADULT FELONY ARRESTS IN 57 COUNTIES, 1977
TYPE OF DISPOSITION BY RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE NEGRO	OTHER	UNKNOWN
Sentence	28608	14569	4581	8121	523	814
Death	0	0	0	0	0	0
Prison	6003	2909	988	1778	141	187
Youth Authority	1303	579	237	426	25	36
Probation	4292	2421	500	1168	85	118
Probation with Jail	14358	7360	2356	4038	216	388
Jail	1417	624	255	457	38	42
Fine	116	56	17	35	2	6
CRC	877	446	207	184	8	32
MDSD	236	172	19	34	7	4
Other	6	2	2	1	0	1

NOTE: Data for Santa Clara County are not available.
It is estimated that these data are 35 percent underreported. Individual counties may vary.

DISPOSITION OF ADULT FELONY ARRESTS IN 57 COUNTIES, 1977
TYPE OF DISPOSITION BY PERCENT DISTRIBUTION OF RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE NEGRO	OTHER	UNKNOWN
Disposition of Felony Arrests	100.00	49.78	17.89	28.64	1.82	1.87
Law Enforcement Releases	100.00	40.75	20.73	36.30	1.40	.81
Complaints Denied	100.00	40.83	19.67	37.19	1.57	.73
Complaints Filed	100.00	52.41	17.25	26.24	1.92	2.19
Misdemeanor	100.00	53.07	18.33	25.23	1.81	1.56
Felony	100.00	51.78	16.25	27.17	2.02	2.78
Lower Court Dispositions	100.00	53.41	17.72	25.10	1.25	1.82
Dismissed	100.00	51.89	16.04	27.54	2.10	2.42
Acquitted	100.00	47.28	18.81	30.33	1.72	1.85
Convicted	100.00	54.21	18.49	23.88	1.88	1.54
Guilty Plea	100.00	54.31	18.45	23.83	1.88	1.52
Jury Trial	100.00	49.66	20.46	25.65	1.77	2.46
Court Trial	100.00	51.32	19.57	25.49	1.97	1.64
Sentence	100.00	54.21	18.49	23.88	1.88	1.54
Youth Authority	100.00	54.55	21.82	18.18	.00	5.45
Probation	100.00	58.46	16.73	21.20	1.94	1.66
Probation with Jail	100.00	51.41	19.32	25.78	1.94	1.55
Jail	100.00	47.49	22.06	27.32	1.70	1.43
Fine	100.00	61.91	15.19	19.83	1.86	1.21
Other	100.00	50.21	17.72	29.54	1.27	1.27
Superior Court Dispositions	100.00	49.99	16.13	28.97	1.83	3.08
Dismissed	100.00	44.86	16.94	31.70	1.91	4.59
Acquitted	100.00	41.20	16.41	36.20	1.74	4.46
Convicted	100.00	50.93	16.01	28.39	1.83	2.85
Original Plea of Guilty	100.00	60.88	15.38	17.92	1.77	4.05
Change Plea to Guilty	100.00	47.99	16.21	31.76	1.71	2.33
Jury Trial	100.00	44.21	17.01	33.20	2.72	2.86
Court Trial	100.00	42.42	15.57	38.57	1.76	1.98
Trial by Transcript	100.00	44.98	13.65	36.55	1.61	3.21

DISPOSITION OF ADULT FELONY ARRESTS IN 57 COUNTIES, 1977
TYPE OF DISPOSITION BY PERCENT DISTRIBUTION OF RACE

TYPE OF DISPOSITION	TOTALS	RACE				
		WHITE	MEXICAN-AMERICAN	NEGRO	OTHER	UNKNOWN
Sentence	100.00	50.93	16.01	28.39	1.83	2.85
Death	.00	.00	.00	.00	.00	.00
Prison	100.00	48.46	16.46	29.62	2.35	3.12
Youth Authority	100.00	44.44	18.19	32.69	1.92	2.76
Probation	100.00	56.41	11.65	27.21	1.98	2.75
Probation with Jail	100.00	51.26	16.41	28.12	1.50	2.70
Jail	100.00	44.04	18.00	32.25	2.75	2.96
Fine	100.00	48.28	14.66	30.17	1.72	5.17
CRC	100.00	50.86	23.60	20.98	.91	3.65
MDSD	100.00	72.88	8.05	14.41	2.97	1.69
Other	100.00	33.33	33.33	16.67	.00	16.67

NOTE: Data for Santa Clara County are not available.
It is estimated that these data are 35 percent underreported. Individual counties may vary.

DISPOSITION OF ADULT FELONY ARRESTS IN 57 COUNTIES, 1976
PERCENT DISTRIBUTION OF TYPE OF DISPOSITION BY RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE NEGRO	OTHER	UNKNOWN
Disposition of Felony Arrests	100.00	50.80	16.90	27.94	1.73	2.63
Law Enforcement Releases	100.00	42.21	19.77	35.97	.99	1.06
Complaints Denied	100.00	40.74	16.95	40.20	1.53	.58
Complaints Filed	100.00	53.26	16.65	25.15	1.83	3.11
Misdemeanor	100.00	55.87	17.53	22.71	1.83	2.06
Felony	100.00	50.50	15.72	27.73	1.83	4.22
Lower Court Dispositions	100.00	55.93	17.07	22.96	1.92	2.13
Dismissed	100.00	56.83	14.76	23.35	1.87	3.19
Acquitted	100.00	45.41	19.15	32.45	1.72	1.26
Convicted	100.00	55.59	18.31	22.60	1.94	1.55
Guilty Plea	100.00	55.83	18.37	22.31	1.92	1.55
Jury Trial	100.00	47.70	18.77	28.69	2.95	1.49
Court Trial	100.00	48.70	14.18	33.89	2.19	1.04
Sentence	100.00	55.59	18.31	22.60	1.94	1.55
Youth Authority	100.00	56.47	18.82	18.82	2.35	3.53
Probation	100.00	60.43	16.57	19.30	1.91	1.80
Probation with Jail	100.00	50.87	19.55	26.38	1.90	1.30
Jail	100.00	49.15	21.13	26.12	2.09	1.51
Fine	100.00	64.28	16.03	16.06	2.00	1.63
Other	100.00	52.10	16.97	28.23	1.65	1.05
Superior Court Dispositions	100.00	46.66	15.61	30.56	1.60	5.56
Dismissed	100.00	41.57	15.47	33.45	1.46	8.05
Acquitted	100.00	36.40	15.83	39.89	1.43	6.44
Convicted	100.00	47.77	15.63	29.81	1.63	5.17
Original Plea of Guilty	100.00	58.26	15.43	17.43	1.67	7.21
Change Plea to Guilty	100.00	44.70	15.34	33.84	1.61	4.51
Jury Trial	100.00	39.42	18.80	34.97	1.94	4.87
Court Trial	100.00	40.79	15.59	40.89	.98	1.74
Trial by Transcript	100.00	36.83	12.50	47.32	1.34	2.01

DISPOSITION OF ADULT FELONY ARRESTS IN 57 COUNTIES, 1976
PERCENT DISTRIBUTION OF TYPE OF DISPOSITION BY RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE	OTHER	UNKNOWN
				NEGRO		
Sentence	100.00	47.77	15.63	29.81	1.63	5.17
Death	100.00	57.14	7.14	21.43	.00	14.29
Prison	100.00	44.14	16.26	32.11	1.84	5.85
Youth Authority	100.00	39.21	18.11	36.48	1.60	4.59
Probation	100.00	53.86	11.09	27.68	1.60	5.78
Probation with Jail	100.00	48.35	15.78	29.61	1.53	4.73
Jail	100.00	41.35	20.55	30.83	2.69	4.59
Fine	100.00	44.94	10.13	35.44	1.27	8.23
CRC	100.00	46.37	22.88	22.45	1.12	7.17
MDSD	100.00	66.50	10.15	19.29	.00	4.06
Other	100.00	70.59	11.76	17.65	.00	.00

NOTE: Data for Santa Clara County are not available.

DISPOSITION OF ADULT FELONY ARRESTS IN 57 COUNTIES, 1976
TYPE OF DISPOSITION BY RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE NEGRO	OTHER	UNKNOWN
Disposition of Felony Arrests	157532	80034	26625	44011	2725	4142
Law Enforcement Releases	10595	4472	2095	3811	105	112
Complaints Denied	21571	8788	3657	8671	329	126
Complaints Filed	125371	66774	20873	31529	2291	3904
Misdemeanor	64414	35990	11290	14628	1177	1329
Felony	60957	30784	9583	16901	1177	2575
Lower Court Dispositions	89295	49941	15240	20503	1712	1899
Dismissed	31471	17884	4645	7347	590	1005
Acquitted	872	396	167	283	15	11
Convicted	56952	31661	10428	12873	1107	883
Guilty Plea	55146	30790	10133	12305	1061	857
Jury Trial	847	404	159	243	25	16
Court Trial	959	467	136	325	21	10
Sentence	56952	31661	10428	12873	1107	883
Youth Authority	85	48	16	16	2	3
Probation	20254	12239	3356	3909	386	364
Probation with Jail	19576	9958	3828	5164	372	254
Jail	9610	4723	2031	2510	201	145
Fine	6761	4346	1084	1086	135	110
Other	666	347	113	188	11	7
Superior Court Dispositions	36076	16833	5633	11026	579	2005
Dismissed	4395	1827	680	1470	64	354
Acquitted	1118	407	177	446	16	72
Convicted	30563	14599	4776	9110	499	1579
Original Plea of Guilty	8458	4928	1305	1474	141	610
Change Plea to Guilty	18112	8096	2778	6130	292	816
Jury Trial	2628	1036	494	919	51	128
Court Trial	917	374	143	375	9	16
Trial by Transcript	448	165	56	212	6	9

DISPOSITION OF ADULT FELONY ARRESTS IN 57 COUNTIES, 1976
TYPE OF DISPOSITION BY RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE NEGRO	OTHER	UNKNOWN
Sentence	30563	14599	4776	9110	499	1579
Death	14	8	1	3	0	2
Prison	5437	2400	884	1746	100	307
Youth Authority	1502	589	272	548	24	69
Probation	5264	2835	584	1457	84	304
Probation with Jail	15181	7340	2396	4495	232	718
Jail	1635	676	336	504	44	75
Fine	158	71	16	56	2	13
CRC	1158	537	265	260	13	83
MDSD	197	131	20	38	0	8
Other	17	12	2	3	0	0

NOTE: Data for Santa Clara County are not available.

DISPOSITION OF ADULT FELONY ARRESTS IN 57 COUNTIES, 1976
PERCENT DISTRIBUTION OF TYPE OF DISPOSITION BY RACE

TYPE OF DISPOSITION	TOTALS	WHITE	MEXICAN-AMERICAN	RACE NEGRO	OTHER	UNKNOWN
Disposition of Felony Arrests	100.00	50.80	16.90	27.94	1.73	2.63
Law Enforcement Releases	100.00	42.21	19.77	35.97	.99	1.06
Complaints Denied	100.00	40.74	16.95	40.20	1.53	.58
Complaints Filed	100.00	53.26	16.65	25.15	1.83	3.11
Misdemeanor	100.00	55.87	17.53	22.71	1.83	2.06
Felony	100.00	50.50	15.72	27.73	1.83	4.22
Lower Court Dispositions	100.00	55.93	17.07	22.96	1.92	2.13
Dismissed	100.00	56.83	14.76	23.35	1.87	3.19
Acquitted	100.00	45.41	19.15	32.45	1.72	1.26
Convicted	100.00	55.59	18.31	22.60	1.94	1.55
Guilty Plea	100.00	55.83	18.37	22.31	1.92	1.55
Jury Trial	100.00	47.70	18.77	28.69	2.95	1.89
Court Trial	100.00	48.70	14.18	33.89	2.19	1.04
Sentence	100.00	55.59	18.31	22.60	1.94	1.55
Youth Authority	100.00	56.47	18.82	18.82	2.35	3.53
Probation	100.00	60.43	16.57	19.30	1.91	1.80
Probation with Jail	100.00	50.87	19.55	26.38	1.90	1.30
Jail	100.00	49.15	21.13	26.12	2.09	1.51
Fine	100.00	64.28	16.03	16.06	2.00	1.63
Other	100.00	52.10	16.97	28.23	1.65	1.05
Superior Court Dispositions	100.00	46.66	15.61	30.56	1.60	5.56
Dismissed	100.00	41.57	15.47	33.45	1.46	8.05
Acquitted	100.00	36.40	15.83	39.89	1.43	6.44
Convicted	100.00	47.77	15.63	29.81	1.63	5.17
Original Plea of Guilty	100.00	58.26	15.43	17.43	1.67	7.21
Change Plea to Guilty	100.00	44.70	15.34	33.84	1.61	4.51
Jury Trial	100.00	39.42	18.80	34.97	1.94	4.87
Court Trial	100.00	40.79	15.59	40.89	.98	1.74
Trial by Transcript	100.00	36.83	12.50	47.32	1.34	2.01

DISPOSITION OF ADULT FELONY ARRESTS IN 57 COUNTIES, 1976
PERCENT DISTRIBUTION OF TYPE OF DISPOSITION BY RACE

TYPE OF DISPOSITION	TOTALS	RACE				
		WHITE	MEXICAN-AMERICAN	NEGRO	OTHER	UNKNOWN
Sentence	100.00	47.77	15.63	29.81	1.63	5.17
Death	100.00	57.14	7.14	21.43	.00	14.29
Prison	100.00	44.14	16.26	32.11	1.84	5.85
Youth Authority	100.00	39.21	18.11	36.48	1.60	4.59
Probation	100.00	53.86	11.09	27.68	1.60	5.78
Probation with Jail	100.00	48.35	15.78	29.61	1.53	4.73
Jail	100.00	41.35	20.55	30.83	2.69	4.59
Fine	100.00	44.94	10.13	35.44	1.27	8.23
CRC	100.00	46.37	22.88	22.45	1.12	7.17
MDSD	100.00	66.50	10.15	19.29	.00	4.06
Other	100.00	70.59	11.76	17.65	.00	.00

NOTE: Data for Santa Clara County are not available.

LANGUAGE BARRIERS IN THE CRIMINAL JUSTICE SYSTEM: A LOOK AT THE FEDERAL JUDICIARY

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I feel I must begin this paper by disclaiming any responsibility for discovering the subject of this presentation. A survey of the literature in the field of criminal justice shows that a number of people, in the last decade or so, have approached the broad issue of what happens to non-English speaking individuals who come into contact with the criminal justice system. Unfortunately, these efforts have three common weaknesses: (1) They dealt with a single jurisdiction or with neighboring ones in a single area, thus giving the impression that whatever problems they discovered exist only in certain parts of the country; (2) They directed their efforts toward a given linguistic minority (basically Hispanics), thus becoming articulators of an ethnic grievance; (3) They looked at the issue almost exclusively in legal-administrative terms, and therefore were able to provide only formalistic solutions to what constitutes a many-sided weakness of the criminal justice system.[1]

The issue is not new: Language has been a barrier among human beings since the beginning of recorded history. Multinational states have existed and exist to this day: Belgium, India, Iran, Switzerland, Canada, and the Soviet Union are a few examples. Yet these states have yet to resolve the issue of large groups of citizens who do not speak or understand the dominant language. The rewards offered by the industrial rebirth of some European countries after the Second World War and the need to import laborers has added a new dimension to this problem in some countries and imported it into others Administrative structures appear to have faced up to the problem in most of Europe, as well as in Canada, where the Bill of Rights adopted in 1960 grarantees that every individual

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shall have access to an interpreter in any proceedings.

What I can definitively say is that the United States, which has had the same problem throughout most of its existence, has not been very successful in bridging the linguistic gap. I will discuss some efforts in connection with the Spanish speaking individuals because that is the primary interest of this meeting, but let me assure everyone that other linguistic minorities have suffered, are suffering, and will continue to suffer from the same type of attitude discussed in this paper. Let me also hasten to add that, in most cases, there are solutions, and that these solutions do not require the expenditure of massive amounts of money, although obviously some funds will be required to provide the services needed.

Let me also emphasize that this paper, and indeed my research, will carefully avoid a broad discussion of bilingualism (or multilingualism). There are many other individuals, much more competent than I am, who can contribute to that particular topic. The position adopted by this paper is that, whatever its advantages or disadvantages may be, bilingualism (or multilingualism) exists in the United States; furthermore, the criminal justice system is not the place where monolingualism can be enforced on defendants and witnesses. Therefore, the language barrier has to be bridged in such a fashion that the non-English speaking individual who comes into contact with the criminal justice system will not be at a disadvantage because of his or her linguistic handicap. By the same token, I do not believe that the criminal justice system should do for the non-English speaking individual what it does not do for the English speaking majority; in other words, deficiencies, and there are many, in the criminal justice system that are not caused by somebody's inability to speak English, can not be solved for a certain group only.

Another objective not included in this paper, or in the research project that supports it, is the allocation of jobs to members of ethnic groups. If there is discrimination in employment, as I think there is in some quarters, the bridging of language barriers in the criminal justice system is not the occasion to redress that particular wrong.

The only valid criterion in recruiting personnel who would be needed to do away with the language barrier in the criminal justice system should be competence to carry out the specific task: Place of birth and group affiliation are irrelevant issues once an acceptable mechanism to measure competence has been devised. To belabor the point, equal opportunity has to be preceded by equal competence.

Legal Framework at the Federal Level

Owing to limitations of time and space, I will provide a brief overview of the handling of non-English speaking defendants and witnesses at the federal level. State legislation, policy, and implementation vary so widely, not only among states but also within many of them, that treatment at this level would have to be postponed until the results of further research appear in print. It must be stated at the outset that federal district court procedures are much more diverse than one would think. Not only are there differences at the district court level, but also between branches within the same district. I will emphasize treatment of non-English speaking defendants, as opposed to witnesses, and of speakers of Spanish, as opposed to others. Finally, I will center on the provision of interpreting services, as opposed to other approaches that might bridge the language barrier.

Let me begin by saying that the United States Supreme Court has, to my knowledge, ruled only once on the matter providing interpreting services for non-English speaking defendants. It was in the case of *Perovich v. United States*, 205 U.S. 86 (1907). The Supreme Court held that appointment of an interpreter in the case of a non-English speaking defendant who was to testify rested upon the discretion of the trial court. The fact that there has been no Supreme Court action in the last 73 years on this subject, itself constitutes an issue worthy of discussion. In any case, the decision granting the court of first instance ample discretion on such a matter has, over the years, permeated into rulings at the state and federal levels. Until January 1979, the federal judiciary was guided by Federal Rule of Criminal Procedure 28, which only states the obvious, namely that "the court may appoint an interpreter..." On October 28, 1978, President Carter approved the Court Interpreters Act, Public Law No. 95-539, passed by the 95th Congress. The Act and its temporary regulations went into effect on January 26, 1979. Regarding the provision of interpreters, the Act amended Chapter 119 of Title 28 of the United States Code, Paragraph 1827. It now reads:

> (d) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, in any criminal or civil action

> initiated by the United States in a United States District Court...if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such a party (including a defendant in a criminal case), or a witness who may present testimony in such action - (1) speaks only or primarily a language other that the English language;...so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.
>
> (e) (2) In any criminal or civil action in the United States District Court, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistanceof the clerk of court or of the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

We can easily see, then, that although some discretion is still left in the hands of the judicial officer presiding over a case, it becames very difficult for such officer to ignore a request for a certified interpreter. Furthermore, a specific denial can come only after a hearing and is subject to appeal; the petitioner can request assistance from the clerk or from the Administrative Office of the U. S. Courts in order to locate a certified interpreter. Finally, the Act ignores the financial capability of the user and mandates the service at federal government expense.

Narrowing the discretionary authority of trial judges in this matter can only be welcome. Nothing in the educational or professional background of the average federal district judge or magistrate points to his being qualified to determine the linguistic capabilities of a given individual to understand court proceedings. Inasmuch as no record is kept in "the other language", it has been very difficult heretofore to place controls on the broad discretionary authority granted by Federal Rule of Criminal Procedure 28. Nor are federal district judges qualified by training or experience to establish who is competent to interpret in their courtrooms. Our field work at the federal level indicates that a significant number, and probably a majority of those who have been working as interpreters in federal district court, and particularly those responsible for Spanish, are unable to accurately interpret the preceedings simultaneously. This is the method that should be employed when a defendant or defendants do not speak English. In practice, most federal district courts allowed their interpreters to provide defendants with summary interpretation of the proceedings, thus placing the interpreter in a position to decide what was and wasn't important for the defendant to know.

In the case of witnesses who did not speak English, including defendants who take the stand, consecutive interpretation is used. Our court observations and interviews with interpreters allow us to state that great variations have existed and exist regarding technique, retention, and accuracy in consecutive interpretation. We noticed, for instance, that a very large number of those currently working have very short memory spans. Since they usually do not take notes, when the question or the answer exceeds a couple of sentences, they interrupt the speaker, ask for repetition, or omit part of the question or answer. We have also noticed a certain disregard for precision. Interpreters observed often resorted to broad, general terms and expressions, although more precise equivalents were available.

As it has been stated by some students of the problem discussed here, there is no explicit constitutional right to an interpreter.[2] On the other hand, it seems to me self-evident that a defendant who does not speak English and is not provided with an interpreter, will not have the benefit of counsel unless his attorney speaks his language, will not be informed of the nature and cause of the accusation, and will not be able to confront the witnesses against him. He would be unable to contribute to his own defense and, more generally, he will be denied due process of law. These are the protections provided by the sixth and fourteenth amendments to the U.S. Constitution. Yet, federal courts appear to have been obsessed by the possibility that, somehow, individuals who really did not need an interpreter got one, or that the issue may open the door to some type of unspecified chicanery. We should keep in mind, in looking at case law, that only those criminal cases in which a defendant is found guilty are subject to appeal on these grounds. No one really knows how many cases there were in which the defendant or a witness had linguistic problems, but because of not guilty verdicts, no appeal was warranted. Nor do we know of those cases in which defense attorneys decided to ignore the issue because of unsympathetic case law at the appeals level. Finally, no one can possibly know about those cases in which a non-English speaking witness testified and the only other person who could understand him was the interpreter. In that context and in the absence of a tape recording of the witness' voice, his recorded testimony is whatever the interpreter says it is. The Federal Court of Appeals for the Tenth Circuit provided us with a good example of twisted logic regarding a non-English speaking defendant. In the case of Cervantes v. Cox, 350 F.2d 855 (1965), it stated:

> Although we have no doubt that under extreme circumstances the inability of an accused to communicate with his counsel may deny him the right to effective representation and actually result in the entry of a plea without under-

> standing we do not find the case at bar to be of such nature. There is no constitutional right, as such, requiring the assistance of a court appointed interpreter to supplement the right to counsel. Nor is there a duty to an accused to furnish counsel who can communicate freely with the accused in his native tongue. The existence of a language barrier between counsel and client is merely one circumstance probing the questions of whether the accused has been adequately represented by counsel and has voluntarily and knowingly entered his plea.

Another example of unusual legal logic was developed by the United States Court of Appeals for the seventh Circuit. In the case of U.S. ex rel. Ortiz v. Sielaff, 542 F.sd 377 (1976), the Court refused to consider inadequate the performance of a defense attorney who rejected his client's request to obtain an interpreter to assist two alibi witnesses who according to the record understood little English. The case had been originally tried in the criminal court of Cook County, Illinois, where observers have indicated that non-English speaking individuals did not receive very much help.

Not all federal court decisions have been so insensitive to those unable to speak English. The ruling of the United States Court of Appeals for the Second Circuit in the case of U.S. ex rel. Negron v. State of New York, 434 F.2d 386 (1970) is cited in nearly all subsequent decisions at the state and federal levels as well as in the limited literature that deals with non-English speaking individuals and the criminal justice system. I personally think that the Negron case is such a textbook example of linguistic discrimination that it is not likely to occur again. Rogelio Nieves Negron was tried for murder in a New York State court. He spoke no English and his attorney spoke no Spanish. There was an interpreter present, hired by the prosecutor, but she only interpreted for the benefit of the court, that is, when non-English speaking witnesses took the stand. She was not asked, nor did she offer, to interpret for the defendant. Occasionally, she did provide him with brief summaries of events after the proceedings had ended. The defendant's communications with his attorney were, at best, sporadic. The federal court concluded that Nieves Negron had been unable to "understand the precise nature of the testimony against him..." and that this inability "would inevitably hamper the capacity of his counsel to conduct effective cross examination."

As I have stated above, the major elements of the Negron case; a capital offense, a poor and ignorant defendant totally unable to to speak English, and an interpreter readily available who is not asked to interpret for him, are not going to reappear often. Yet, I should be somewhat more guarded in my statement. In the course of doing field research for this project I audited the case of U.S. v. Jose Estrada Segovia and Lionel Gonzalez Villanueva. In that case, there was an interpreter present, but he interpreted only for the benefit of the court when Spanish-speaking witnesses took the stand. At other times, he sat in the courtroom, away from the defendants who did not speak English. It was only at the suggestion of one of the marshalls, after the guilty verdict was pronounced and the court had adjourned, that the interpreter communicated the result to the defendants. The judge who presided over that trial has, I believe, retired. I trust that the interpreter will be retired by the implementation of the Court Interpreters Act.

A more common occurrence these days may be hostility to non-English speaking defendants, such as that reflected in the record of *U.S. v. Gomez*, 529 F.2d 412 (1976). The Fifth Circuit Court quotes the federal district judge as saying to the interpreter, in front of the jury,

> Arrange yourself so you can sit between the two that claim they don't speak English. I know they do.

Incidentally, the Circuit Court found nothing wrong in that remark. Yet the same Circuit Court had reversed two years earlier a guilty plea in the case of *Torres v. U.S.*, 505 F.2d 957 (1974) because,

> The record shows that the statement of the factual basis for the plea was not translated for Torres, though the court found it necessary to translate the other parts of the proceedings to him.

The same Circuit Court again reversed the conviction in *U.S. v. Diharce-Estrada*, 526 F.2d 637 (1976), partially because,

> Defendant's pre-trial statements were not transcribed, even though Diharce spoke only broken English and it was not unlikely that, without the aid of an interpreter, misunderstandings could result.

The same United States Court of Appeals for the Fifth Circuit did not show very much concern for quality of interpretation. In *U.S. v. Peña*, 542 F.2d 292 (1976), the court found acceptable the services provided by a Disney World interpreter, who translated advice regarding the defendant's rights as well as a consent-to-search form, which Peña signed. When he appealed on the grounds that he did not understand what had happened, the court emphasized that he had been "repeatedly warned of his rights in Spanish..." Evidently, for the Fifth Circuit Court this was no 'mickey mouse' translation.

This and other Circuit Courts have reversed cases when faced with clearly unqualified interpreters, although they have often called it something else. In U.S. v. Vera, 514 F.2d 102(1975), the Fifth Circuit Court reversed the denial of a motion made by the defendants to withdraw their guilty plea. While the decision was based on a general understanding of the facts to which the defendants pleaded guilty, the exchanges quoted by the Circuit Court point to evidence of inadequate interpretation. A similar situation can be found in U.S. v. Rodrigues, 491 F.2d 663 (1974). In that case, the United States Court of Appeals for the Third Circuit found that,

> The testimony of Leonore on the question whether appellant was present at the second meeting is ambiguous and unclear. As to whether this lack of clarity is due to the language barrier of is attributable to a poor recording from which the partial transcript was made, we can only speculate.

In general, however, Federal Courts of Appeal have been extremely reluctant to get into the question of quality of interpretation, once the interpreter has been provided. In point of fact, most judges are neither qualified nor have the elements needed to make qualitative judgements. The conclusion of the Tenth Circuit in Morales-Gomez v. U.S., 371 F.2d 432 (1967) appears to be the standard answer to this type of appeal,

> We can find no facts in the record which would support a claim that the interpreter did not fairly interpret the testimony contained in the statement. The rule that alledged errors in the conduct of the trial will not be reviewed unless the facts connected therewith appear in the record applies to assignment of error based on the claim "that the interpreter did not fairly interpret the testimony."

Since the record contains only the English version of what goes on in the courtroom, as conveyed by the interpreter in the case of non-English speaking defendants or witnesses, there is no way that the record will show errors. Only gross confusion may lead to a reversal, but that is not likely to be reflected by the record either. When the interpreter is interpreting into the foreign language for the benefit of the defendant, the record does not reflect anything. And yet, it is in this situation where the most blatent violations of due process are likely to occur. In this context, it is not surprising that the United States Court of Appeals for the First Circuit in U.S. v. DeJesus Boria, 518 F.2d 368 (1975) rejected without much discussion a request for true simultaneous interpretation and a record in the original language of the proceedings conducted in Spanish. The decision of the court should be quoted:

> Whatever its advantages, the proposed system would require additional court personnel and cost; and, since we do not believe the present system is unconstitutional, we must leave it to Congress whether to adopt the changes appellant urges. We are of the opinion that the present system affords Spanish speaking defendants their rights to due process, a fair trial, the assistance of counsel, and the equal protection of the laws under the fifth, sixth, and fourteenth amendments. In the present case, *we find nothing specific to indicate that appellant was affected by linguistic or translation errors, or indeed that there were material uncorrected errors.* English testimony and court proceedings were translated into spanish for his benefit, and his able bilingual counsel and the court could hear the translations being made into and from Spanish. *Alleged inaccuracies* could be and *in several instances were called to the interpreter's attention.* There was no error. (Emphasis added).

Notice that the court recognized that the interpreter made some mistakes, which were corrected, and points out that the record does not show uncorrected errors. Since the record is kept only in English, it can not reflect any translation errors unless they have been placed on the record, that is, corrected or challenged. The appellant was requesting the means to locate uncorrected errors and pointing out that existing procedure made it impossible for him to do so. This matter of keeping the record in the other language was candidly discussed during the hearings held by the Subcommittee on Civil and Constitutional Rights of the House. Witness the exchange between Congressman M. Caldwell Butler and Mr. Stafford Ritchie, of the Administrative Office of the U.S. Courts:

> MR.BUTLER: Does a record of a proceeding involving interpreters include a statement or record of the interpretation?
>
> MR.RITCHIE: No.
>
> MR.BUTLER: Is the beneficiary of an interpretative proceeding entitled to review the proceedings on the basis of determining whether or not there was a fair translation?
>
> MR.RITCHIE: That is a very difficult question to resolve. The proposal put forth in this bill would attempt to address it, by insuring before the proceeding begins that the interpreter is qualified. Qualification is the assurance for the benefit of the defendant that he is receiving an accurate translation of the proceeding.
>
> MR.BUTLER: At the present time, there is no assurance at all?
>
> MR.RITCHIE: That is correct; there is none.
>
> MR.BUTLER: No one has ever litigated that?
>
> MR.RITCHIE: Well, nobody knows how accurate the interpretation may have been except the interpreter. And he is the wrong person to look for an impartial assessment of his performance.
>
> MR.BUTLER: *The best way to avoid appeals in this area is to make sure there is no record of it*...(Emphasis added).[3]

One case where the record was kept in Spanish, as well as English, was that of U.S. v. Salas Aleman, 417 F.Supp. 117 (1976). In this case, decided by the U.S. District Court for the Southern District of Texas, the defendant challenged the plea proceedings conducted before a U.S. Magistrate. The Court concluded that,

> The complaint was fully translated, *albeit incorrectly*. In translating that portion of the complaint reading "willfully, knowingly and unlawfully," the interpreter erroneously interjected as a requisite element of the offense knowledge by the accused that it was illegal to carry a gun. To compound the error, the translator referred to the "airport" when he apparently meant "airplane" ... Unquestionably, without knowing what the translator had just told the accused, appellant's response saying that he did not know that it was against the law to carry a firearm seems unresponsive and makes little sense. But in the context of the translation actually rendered, his statement makes perfect sense and required further inquiry. However, the magistrate was at a distinct disadvantage in not knowing what was being said in Spanish and justifiably relied on what he assumed to be a competent interpreter.

The decision also contains the Spanish and English versions of some parts of the proceedings. These transcriptions, assuming that they are accurate, reflect more problems than those referred to in the decision. It is extremely rare, however, to be afforded the type of insight contained in U.S. v. Salas Aleman. In most cases, the rendering in the other language, particularly when the interpreter is interpreting for a defendant who is not testifying, can not be retrieved. In fact, most interpreters interviewed in the course of our research opposed systematic recording of their performance. In this they are supported by many federal judges, who probably were instrumental in having the Judicial Conference of the United States proclaim in 1974 that no legislation or change in prevailing court practices were needed. In 1977 the Judicial Conference insisted that existing rules and procedures adequately protected the rights of non-English speaking individuals.[4]

Federal District Judge Manuel Real was not so sure; in his 1973 testimony before the Senate Subcommittee on Improvement in Judicial Machinery he stated:

> I feel that any legislation that is considered by the Congress in terms of a provision for interpreters should include a provision which will require the Administrative Office, either through its own offices or through the Federal Judicial Center, *to improve the quality of interpreters in general.* I will say that we now have many qualified interpreters; do not misunderstand me, Mr. Chairman, but I have had the experience of having many unqualified interpreters in my courtroom... (Emphasis added).[5]

The Situation in the Federal District Courts

Enough of federal laws and legislations and legal precedents. What is the situation in the various federal district courts? What really happens in regular court proceedings? Let me begin by emphasizing that federal district officials, and particularly residing judicial officers, think of themselves as leading citizens of fully autonomous entities. They cherish this autonomy and become defensive when any part of it is threatened. The procedures employed by our political system to select judges and magistrates, as well as court personnel, emphasize their localism. Their general view of centralization influences their handling of linguistic minorities.

At the present time there are 18 full-time employees of various federal district courts with the title of interpreters. Nearly one-third of them serve in the Federal District Court of Puerto Rico. This number of employees work part-time or full-time as interpreters although they have been given various other titles. Furthermore, some of those carrying the title of interpreter perform a number of other duties, such as law librarian and deputy clerk. The fact is that only an in-depth survey of all federal district courts will give us a realistic estimate of the numbers involved. Yet, even this estimate would not be specific enough. Nearly all the federal district courts located in areas where linguistic minorities are present in large numbers, as well as many of those located elsewhere, utilize the services of free-lance interpreters, sometimes called "per diem" or "contract" interpreters. These individuals are more or less on call; some of them work elsewhere in the general area, often as teachers, pastors, or secretaries. Others are full-time interpreters working as independent contractors and are available to the entire legal community as well as to local business. Some of them own translation agencies and perform more like entrepreneurs who connect supply with demand. Those who do not usually make themselves available to the entrepreneurial kind, make themselves known to judges, court administrators, prosecutors, defense attorneys, and all those who may need their services.

Some district courts rely solely on independent contractors of one type or another. One major court, with a large number of non-English speaking defendants and witnesses, has for the last 14 years or so given a concession to an agency owned by one person; this individual has in fact become the sole provider of interpreting services, in all languages, to that particular federal district court, to the United States Attorney's Office, and to private attorneys. Apparently, the agency was originally recruited to work for the U.S. Attorney's Office, which until 1979, when our field research was conducted, was paying for its services. It is clear that this agency was chosen without any formal bidding or competition. Furthermore, by granting such an open concession, the federal judiciary of that area has agreed in advance to accept whoever the agency sends. Usually three to five interpreters are needed in court proceedings in that particular district court in any one day, in addition to those serving the U.S. Attorney's Office and the defense outside courtrooms. There is no mechanism whatsoever to determine the competence, qualifications, and performance of these interpreters, except those implemented by the agency holding the concession. In an interview granted after a number of requests, the owner of the agency claimed to have been very careful in the selection of interpreters and to have provided them with training. However, the individual in question refused to provide concrete information regarding the sources of interpreters or their background, on the grounds that "it was a trade secret" and that "the prior approval of the court was needed." Needless to say, I never got the information.

A look at the economics of this case reinforces our negative assessment of the quality of interpretation provided: The agency was paid a fixed amount, nominally per day, but more likely per appearance and/or per case. Out of this fixed amount the agency paid the interpreters, who were in fact subcontractors. It was in the interest of the agency to recruit the least expensive subcontractors who would be acceptable to the court, the U.S. Attorney's Office, and the defense. During the period of observation there was one case in which the quality of interpretation was questioned. On the other hand, it was in the interest of the interpreting agency to have subcontractors present when they were needed, so availability did not appear to be a problem.

Other federal district courts have combined one or more full-time interpreters with a list of independent contractors. When this happens, usually the full-time interpreter handles routine proceedings, such as preliminary hearings, and arraignments, and the contractors work on trials. A third category of courts rely solely on their full-time interpreters, who are responsible for all kinds of proceedings when non-English speaking individuals are involved. In this category, some judges and magistrates adjust their calendar to the availability of the interpreter. Others, however, proceed without him, and either draft a deputy clerk, a relative, a spectator, a marshall, a secretary, the prosecuting or defense attorney, someone else who happens to be around, or proceed without an interpreter. We have witnessed most of these options and have been told of the rest by uninterested observers.

Two myths which are often mentioned in interviews with court officials should be mentioned briefly. The first one has to do with the appointment of defense counsel who speaks the language of the defendant or defendants. Some federal district judges and magistrates assume that such an appointment solves the language problem and the issues raised in this paper. There is no question that such appointments, when possible and realistic, constitute a very good policy. They make possible confidential exchanges between attorney and client without third parties present; they also permit those exchanges at the parties' choosing. The attorney, however, can not properly represent his client in court and interpret for him while proceedings are going on; in situations of this type, the defense attorney usually attends to his professional responsibilities and leaves his client in the dark. Furthermore, the assumption that an attorney is a competent interpreter is highly questionable.

The second myth is that defendants are unable to contribute to their own defense. The fact is that some are and some aren't. We observed a criminal case in a federal district court in which testimony dealing with navigational techniques was important. The defendants, all experienced sailors, did not speak English. The court had provided them with a good interpreter and simultaneous equipment; consequently they were able to follow the English language testimony in detail and advise their attorney regularly on what they claimed were errors by prosecution witnesses. The absence of accurate simultaneous interpretation would have prevented their participation in the cross-examination of witnesses against them.

What Can Be Done?

What, then, can we suggest in this area of linguistic minorities and the criminal justice system?

1) The federal certification program should be supported and efforts made to improve it and to have it implemented in all federal district courts; this means that when Spanish-speaking defendants and witnesses appear in a federal case, the attorneys demand that certified interpreters be provided at government expense.

2) If it is claimed that certified interpreters are not available, attorneys should indicate on the record, at the outset, that the qualifications of the interpreter appointed by the court have not been demonstrated, and request that a record be kept of all remarks made in Spanish or interpreted into that language, whether made in open court or to the Spanish-speaking defendant, if there is one.

3) Under no circumstances should attorneys agree to proceed without interpreters appointed by the court at government expense. In view of this research and of other published works in this area, the willingness to proceed without an interpreter may be considered incompetence or deficient representation.

4) Most criminal cases relevant to linguistic minorities go before state courts; attorneys and minority group leaders should petition the courts to employ interpreters certified by the federal judiciary. The few attempts made by states such as California and New York to select criminal court interpreters through examination have, in my professional opinion, been worthless. This statement is not intended to cast doubt on all state court interpreters, some of whom are competent and dedicated. But I do believe that those sporadic attempts that have been made have failed to discriminate

between competent and incompetent interpreters. Most states, as we all know, have made no formal attempt to identify competent interpreters.

An obvious objective ought to be to have legislation in all fifty states and the District of Columbia mandating the use of criminal court interpreters at the request of any of the parties in a criminal case. These interpreters should be chosen from a state-wide registry made up of those found qualified by an objective procedure. Inasmuch as reliable, objective procedures are beyond the ability of most state judiciaries, the obvious solution is to use federally certified interpreters. I hope that you will agree with me.

Submitted by
Carlos A. Astiz

FOOTNOTES

1. The most useful studies of this problem include: "The Right to an Interpreter," *Rutgers Law Review*, 25:145-171, Fall 1970; Jean F. Rydstrom, "Right of Accused to Have Evidence or Court Proceedings Interpreted, " 36 ALR 3d, pp. 276-312; Joan Bainbridge Safford, "No Comprendo: The Non-English-Speaking Defendant and the Criminal Process," *The Journal of Criminal Law and Criminology*, 68:15-30, March 1977; Williamson B.C. Chang and Manuel U. Araujo, "Interpreters for the Defense: Due Process for the Non-English-Speaking Defendant," *California Law Review*, 63:801-823, May 1975; Charles F. Adams, "Citado a Comparecer": Language Barriers and Due Process--Is Mailed Notice in English Constitutionally Sufficient?" *California Law Review*, 61:1395-1421, December 1973; Leonard J. Hippchen, "Development of a Plan for Bilingual Interpreters in the Criminal Courts of New Jersey," *The Justice System Journal*, 2:258-269, Spring 1977; Marilyn R. Frankenthaler and Herbert L. McCarter, "A Call for Legislative Action: The Case for a New Jersey Court Interpreters Act," unpublished manuscript, 1979; Bonnie Bondavalli, "Spanish-Speaking People and the American Criminal Justice System," paper delivered at the Annual Meeting of the Academy of Criminal Justice Sciences, March 1979; Alan J. Cronheim and Andrew H. Schwartz, "Non-English-Speaking Persons in the Criminal Justice System: Current State of the Law," *Cornell Law Review*, 61:289-311, January 1976; and Glenn Bergenfield, "Trying Non-English Conversant Defendants: The Use of an Interpreter," *Oregon Law Review*, 57:549-565, 1978.

2. See, for instance, Rydstrom, *op. cit.*, *passim*. The United States District Court for the Eastern District of Pennsylvania emphasized the lack of a constitutional provision in a lengthy note in *United States ex rel. Navarro v. Johnson* 365 F. Supp. 676 (1973). See note 3, pp. 681-683. Two states, New Mexico and California, have constitutional protections for non-English speaking defendants; see art. II, section 14 and art. I, section 14, respectively.

3. U.S. Congress, House, Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, *Court Interpreters Act*, 95th. Congress, 2nd. sess., 1978, p. 39.

4. See "Annual Report of the Proceedings of the Judicial Conference of the United States, March 7-8 1974," pp. 5-6; and "Annual Report of the Proceedings of the Judicial Conference of the United States, September 15-16, 1977," *passim*.

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the original document was blank.

5. U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Improvements in Judicial Machinery, The Bilingual Courts Act, 93rd. Congress, 2nd. sess., 1974, p. 37.

IMPACT OF THE CRIMINAL JUSTICE SYSTEM ON HISPANICS

By:

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Prepared for:

National Hispanic Conference
on
Law Enforcement and Criminal Justice

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There appears to be increasing interest in recent years in the Hispanic population in the United States. This year is particularly noteworthy because being an election year, this interest is heightened and an effort is made by the political parties to leave no stone unturned, since often the margin of victory at the polls can be, what would otherwise be, an insignificant number of votes. Groups such as ours, which are often neglected by the powers that be, suddenly are focused on and become important. I am not postulating that this is the reason for this conference, because frankly the reason does not really matter. The fact is that we are here in Washington and we have the opportunity to come together and discuss a subject that is of increasing importance to all of us: Law Enforcement and Criminal Justice, as it impacts on Hispanics in the United States.

We Hispanic Americans, or Latin Americans as we may care to regard ourselves, must take note and believe what is being written about us; you may have noted that we finally joined the select few and made the cover of Time magazine on October 16, 1978 in an article entitled, "Hispanic Americans, Soon: The Biggest Minority." The Time article alluded to the 1960's being the Black power decade and to the 1980's being the decade of the Hispanics. If we are to believe these prognostications, then the 1980's are here, and wishing will not make it happen.

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We, the Hispanics, must make this our decade. This must be our time. I have been in this country since 1937 and, as many of you here, sincerely believe that the time is now to make our move. We have the numbers. Now we must make them count. I have seen various Hispanic groups coming together this year and forming national coalitions. Now is an opportune time to get out in front where we belong and stop the benign neglect of Hispanics and the view of us as second class citizens.

Heretofore, most equal employment and affirmative action programs have been Black oriented. I have no quarrels with the Blacks' situation being redressed to overcome their 200 years of oppression; but, Chicano oppression, Puerto Rican oppression, and the oppression of every other Hispanic group that has been exploited and discriminated against must also be addressed. Statistics are most revealing. Every statistic that I have seen about Puerto Ricans indicates that they are the largest and most beleaguered national group among the estimated 2.6 million Hispanics in and near New York City--more so than Blacks and other national groups. When looked upon in this context, we find that despite our numbers, we are indeed powerless.

An area of critical concern to me, because I have made it my life's work, is our legal system. This is not a subject that I selected at random, but one in which I have spent a better part of my adult life involved in. Hence, I will address the criminal justice system from the perspective of my experiences within it --having been its victim at times, having worked in it as a police and probation officer in the 50's, having worked as a street gang worker in the Puerto Rican Barrios of East Harlem and the South Bronx, as well as having toiled as a defense attorney for 15 years. For the past eleven years I have worked as a jurist, six of them as a judge of the Criminal Court of the City of New York, three-and-one-half as a justice of the Supreme Court, and since December of 1979 as an Appellate Court justice. I have also learned much from having taught a course, "The Criminal Justice System and the Poor" since 1972 in our local colleges.

My views are to a great extent limited to my personal experiences as a Puerto Rican living in New York City, but I believe these can easily be translated to the experiences of other Hispanics in urban areas, such as Los Angeles, Chicago, Newark, Houston, Miami, and other Hispanic enclaves. I will not burden you unduly with a myriad of statistics for fear of confusing you. Suffice it to say, that if you are interested in statistics, I refer you, for example, to the recent monogram written by Dr. Peter L. Sissons of the Hispanic Research Center at Fordham University in the Bronx, entitled, The Hispanic Experience of Criminal Justice.

Several years ago I conducted a series of seminars for the Puerto Rican Study Center at CUNY (City University of New York) on the criminal justice system, entitled, "Perspectives on Justice." It was an interesting experience in that it consisted of a series of lectures where I was assisted by two former inmates, one male and one female. I would lecture on the law and its theory and they, in turn, would discuss how the theory worked in its practical application in their respective conflicts with the law. In addition, in each seminar the justice system was looked at from a different perspective; that is, each week a different person would address the group from his or her perspective. Thus, in successive weeks, the system was discussed from the perspective of the arresting officers, the prosecutor, the judge, the defendant, the victim, the probation officer, the defense counsel, and the warden. In this fashion, it was seen that the justice system means different things to different people and that one's concept of justice is like a person's concept of art, in that it is garnered from the point of view of the beholder. It was thus possible to analyze and view a crime in a Rashomon type of situation, where the same act is viewed from a different perspective and different analogies are arrived at.

I cite the above experience because in addressing the justice system one must not lose sight of the speaker or writer. Generally, that person will view it from his or her own frame of reference. If the person is law enforcement oriented, you will generally receive a law-and-order point of view. If the person happens to be defense oriented, you will most likely receive a civil libertarian viewpoint.

The victim of a crime would most likely speak about its heinous nature and the inadequate punishment being meted out. A politician would, no doubt, speak about the need to curb crime in the streets, the need for more police protection, more laws, stricter sentences, and increased punishments. No doubt, I have been influenced by my experiences as a jurist and will attempt to be as objective as is reasonably possible.

The criminal justice system in the United States, like the police, is experiencing difficulty. The rate of crime is on the increase, the apprehension of perpetrators is on the decrease, and society's belief in the system has been significantly eroded. No longer are judges and police regarded as sacrosanct. The inmate population is growing and, increasingly, the delays between the time of arrest and time of trial become greater. There is growing public concern about people being out on bail in the more serious crimes. In Puerto Rico there is presently a referendum sponsored by the Governor which would provide for the remand without bail of people arrested for the commission of the more serious felonies, such as rape, murder, arson, kidnap, bombing, and the like. Does this have any significance as it relates to Hispanics? The answer clearly is yes. Hispanics, Blacks, and other minorities make up the bulk of those who are arrested and, clearly, they bear the brunt of the system. In New York City, if you were to visit a Criminal Court on any given day, you might be surprised to learn that 30 to 35 percent of the arrested are Hispanics, 50 to 60 percent are Blacks, and the remainder from other national groups. A visit to our prisons would show an even higher ratio in that the majority of those imprisoned are Blacks and Hispanics.

Whitney North Seymour, Jr., a former U.S. Attorney for the Southern District Federal Court wrote a book entitled, Why Justice Fails. In it he graphically demonstrates that Blacks, Hispanics, and the poor receive disproportionately greater sentences than whites for the same crime. This should come as no surprise to anyone who is familiar with the system. Aside from the fact that there is no question that there is racism involved, there is also the fact that Hispanics, Blacks, and the poor are the most likely to be unemployed, the most likely not to have been able to make bail and, therefore, more likely to accept a plea bargain or "cop a plea" as it is called; the most likely not to be able to hire their own lawyer and be given a court appointed lawyer; and because there are so few Hispanics in the system as prosecutors, judges, and probation officers who speak his language, understand his culture and problems, he is more likely to go to jail. Studies made in New York City by the Legal Aid Society have shown that persons in jail who have been unable to make bail are 50 percent more likely to get additional jail sentences than those who made bail.

Since the criminal justice system is made up of several components--to wit, police, prosecution, courts, probation, and corrections--I would like to make some observations on these components as they impact on Hispanics.

Hispanics are vastly underrepresented in the police force throughout the United States. In New York City, they constitute less than three percent of the total force of over 20,000 policemen (in the New York City Police Department) despite the fact that Hispanics constitute 15 to 20 percent of the total population (estimated at over one-and-one-half million Hispanics). The result is that there is constant friction between police and Hispanics, particulary in the overwhelmingly Hispanic areas. In these areas, the police are viewed with skepticism, fear, and hostility by the community, and the police, few of whom live there, in turn, view the community with suspicion, fear, and hostility in what is commonly called the "good guys and the bad guys" syndrome--meaning the police are the good guys and the people, the bad guys--a "them and us" situation. This feeling is exacerbated by the fact the police are often seen as oppressors who do not speak the language, do not understand the culture, and lack empathy and sensitivity when acting in what otherwise would be a minor or routine situation. To illustrate, last year in Brooklyn, a Hispanic mother telephoned the police about her son who had emotional problems, who had been hospitalized in a mental institution, and now who was on a fire escape with a pair of scissors. The police responded. The young man, named Benitez, came off the fire escape and was told to drop the scissors. When he did not immediately do so, without his accosting or threatening any of the police, four or five officers opened fire, causing his death in the presence of his own mother.

An autopsy revealed there were over 18 bullets in his body. I understand that several weeks earlier the mother had called the police in a similar situation, and a Hispanic officer had responded. He spoke in Spanish to Benitez, and the situation was resolved without the resulting tragedy.

There is an increasing concern with police brutality in the Hispanic community. The number of Hispanics and Black deaths at the hands of the police is on the rise. What is more alarming is that seldom, if ever, does an indictment of a police officer come about as the result of these needless and sometimes wanton killings. Even in the few instances when an indictment results, generally white juries will acquit a white policeman who kills a Hispanic or a Black. The cases are too many to cite here. Witness the recent situation in Miami, Florida, which led to the race riots, or the Tuorsney case in New York, where a police officer shot a 15-year old Black youth at point blank range and was acquitted based on a defense of temporary insanity (a rare case of temporary epilepsy that manifested itself only at the shooting and never again). You are all familiar with the case of a Chicano, J. Campos Torres, who was beaten and drowned by police officers in Houston, Texas, and upon their conviction for violating his civil rights, a felony, and for beating him, a misdemeanor, the officers received 10-year suspended terms and probation. In New York, a Puerto Rican, Rodriguez, was beaten to death in a Bronx police precinct. After a massive cover-up, one police officer, Ryan,

was indicted for the death. He was found guilty of criminal negligent homicide, which carries a maximum sentence of 40 years.
Ryan was let out on bail, instead of being remanded pending sentence which is usually the case. While on bail, he caused the death of another person while driving his vehicle in an intoxicated condition and, then, proceeded to jump bail. He has yet to do one day in jail for those killings.

Hispanics and the poor suffer at the hands of our bail system, which is based primarily on money. Several years ago, a study by the Legal Aid Society revealed that over 63 percent of the inmates at Rikers Island, a New York City maximum prison, were there, not because they had been convicted of any crime, but because they were too poor to make bail. In 1972, Governor Rockefeller commissioned a study of bail practices in New York. The study, called the Jones Study, revealed that money bail as presently constituted in New York, violated the Eighth Amendment of the U.S. Contitution in that it amounts to cruel and inhuman punishment in keeping the poor imprisoned because of their inability to make bail, before their guilt or innocence has been adjudicated. In fact, the law prohibits persons being placed in jail because of their inability to pay a fine. The New York bail system, it was found, made a mockery of one of the cornerstones of our criminal justice system: the presumption of innocence, that a person is presumed innocent until proven guilty. There have been many instances of persons who have been incarcerated in excess of six months to a year for minor crimes, only to be found innocent.

Hispanics are vastly underrepresented in the arena of the courts. In the Federal judiciary, it was not until October 1979 that, for the first time, a Puerto Rican, Jose Cabranes, was named to a Federal District Court judgeship located on the mainland United States. Thus, in the United States, where there is an estimated over three-and-one-half million Puerto Ricans, we have only one Federal judge. To my knowledge, the state level is not appreciably better, there being only one Puerto Rican appellate judge.

The question may arise of whether it is important to have Hispanic judges. I would surmise that the answer depends on the type of person that the judge is. If he is not a Vende Patria, one who sold out his people for his job, then it is important. Aside from the fact that a Hispanic judge brings to the court his experience and familiarity with our culture, he is also a symbol. I believe that good government is representative government. Hispanics whant to participate and be part of government. I have no doubt that it was highly significant to have a Jewish seat in the Supreme Court as it was to have a Black seat. Likewise, it would be significant to have a Hispanic seat. Aside from the particular contribtuion that the judge would make, it would be a sign to our people that Hispanics abound in the system other than as defendants and would help to motivate our youth to aspire to such positions and to feel that they too can achieve them. Beyond its symbolic value, one will readily agree that a courtroom appears much less oppressive when there are other Hispanic faces about, be they prosecutors, judges, court officers, defense counsel, and the like.

Hispanics need representation in the prosecutors office. It is the prosecutors office that makes the initial determination as to whether a person will be charged with a crime and held subject to trial. Further, it is the prosecutor who must consent to any lesser plea offered to a defendant. As things stand now in our courts, because of extensive plea bargaining (over 90 percent of the cases are disposed of in this fashion), prosecutors play a key role and in a sense control the sentence to be meted out by the court. Many a prosecutor will not consent to a reduced plea unless the defendant and the court agree to a minimum sentence determined by him. Hence, a prosecutor wields a powerful instrument in that he often determines the length of the sentence. Too often prosecutors who come from middle class backgrounds, with little or no knowledge of life in the ghetto or of Hispanic culture and values, impose their notions of justice and the law upon the Hispanic defendants. These notions are generally insensitive as to the defendant's needs or mores. The prevailing trend is towards mandatory jail terms, instead of probation and rehabilitation programs, and towards longer jail sentences. A prosecutor familiar with Hispanic customs and culture can often deal with, what might otherwise be a miscarriage of justice, as many incidents before the court are generally a result of misunderstandings and family-related situations.

There appears to be a reluctance on the part of Hispanics to become prosecutors for fear of being regarded as parriahs by their people. This is a misconception. We need Hispanics as prosecutors for they can help minimize the callousness with which defendants are often times treated in the courtroom. Not only that, but such Hispanic prosecutors can aid in ameliorating what might, at times, be regarded as a racist atmosphere in the courtroom. They also would help to eradicate the sometimes-accepted notion of police, and the like, who tend to view all Hispanics only as defendants.

There are not enough Hispanic lawyers in this country. Presently, the United States has over 600,000 lawyers. In New York State alone, we are second only to California in the number of admitted lawyers, (there being 70,000 in the state). Despite this impressive figure, the number of Hispanic attorneys in new York City is under 400. Of these, few are trial attorneys. The Legal Aid Society, which represents indigent defendants--and over 80 percent of the Hispanics before the courts--has less than 10 percent of its attorneys as Hispanics. I can count on my fingers the number of experienced Hispanic attorneys who will try a murder case. This same situation pertains in the civil area. There are few appeals lawyers. The need is great. Yet, the latest statistics from a report of the American Bar Association, New York Law Journal of February 14, 1980, shows that in 1978-1979, out of 122,801 students attending 169 law schools; women students now make up 38,627 or 31.5 percent of that total; Mexican Americans, 1,558; other Hispanic Americans, 714; and Puerto Ricans, 540. These are dismal numbers indeed if we are to provide legal representation to the 19 million Hispanics in this ever-increasing litigious American society.

Aside from the fact that there are few Hispanic lawyers, many of those who do become lawyers seem to lose their identity and committment as they go up the ladder. I do not know if we, the community, the law schools, or they, are to blame; but, I have seen it time and time again where students profess to want to become lawyers to represent their people and right their wrongs, only to come out of law school and seek a safe job in government or in the corporate world, seldom to be seen in their communities again. We need lawyers with a sense of purpose, with a sensitivity to the problems and the needs of their people. I do not advocate that all Hispanic law students study poverty law or criminal law. We need corporate lawyers, labor lawyers, lawyers with the skills to put to the service and the use of their people.

We must stem the tide of lawyers who turn away from their people and whose all-consuming interest becomes making money. I have no qualms with making money. All I am saying is that you can do both, work with your people and make a decent living. A person should have a framework within which he works and should think of making some contribution other than the money he gets out of his work. As a judge, I function out of a concept of social justice. As lawyers, Hispanics should think in collective terms; of their people, their community, for none of us will make it unless we all make it. The Blacks have learned this time and time again.

Our prisons do not rehabilitate. Presently, in New York State, over 20 percent of the total prison population is Hispanic. At one time it was believed that we had more of your youth in prisons that we had in the colleges. This situation has been remedied in that more and more of our youth are seeking higher education. For those unfortunates who are imprisoned, we must continue to demonstrate our concern and care. Prisons have a way of dehumanizing and brutalizing our people. For Hispanics, many of whom have language handicaps, the process can be even more disasterous. Because of language and educational handicaps, Hispanics can seldom participate in meaningful rehabilitation programs as they do not qualify and, instead, they languish in prisons with nothing but dead time on their hands.

Hispanics often receive disproportionate sentences; that is, sentences more severe than those given to their white counterparts for the same or for similar crimes. This disparity, coupled with the failure to receive necessary or needed psychiatric, psychological, or vocational counseling, leads to youths who return to society embittered, without a change in lifestyle, and who are more apt to become recedivists. I sometimes think that Dr. Karl Menninger was

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correct in his book, The Crime of Punishment, where he writes that it is society that is criminal in its failure to provide individuals with their basic needs--that is, a decent home, an education, and a decent job--and, therefore, commits a crime against them. Instead society imposes upon them severe periods of incarceration and warehouses them, as if severe punishment was the solution. We should have learned by now that it is the certainty of punishment, rather than the severity thereof, that has meaning.

Any discussion on the criminal justice system should, I believe, touch upon juries, which in my mind are the saving grace of the American criminal justice system. Were it not for juries, our system would not be as highly regarded in the world as it is. Dispite its imperfections--and believe me it has many--we are still one of the few countries in the world which permits trial by jury; a jury composed of the people in one's community; selected by the prosecutor, the defendant and his lawyer alike, and, a trial conducted in an open courtroom to which the press and the public have free access. These things cannot be taken lightly, particularly in the light of my own personal experiences with human rights violations in countries such as Chile, Argentina, and Paraguay. We do have due process and its failings, if any, I believe are not the fault of the law, but of the people that administer the law.

Hispanics must participate more in juries. A recent study of juries in Bronx County by David Bernheim indicated that Bronx County, which has a population of over 30 percent Hispanic, showed that only 8 percent of the juries in criminal cases consisted of Hispanics. True, jury selection is made from voters lists and telephone subscribers and true that state jurors are paid paltry sums ($12 per day). Still, we must encourage our people to get involved and not avoid jury duty. Think what would have happened to Angela Davis, Huey Newton, Daniel Berrigan, and Carlos Feliciano had they not been tried by juries. We must get Hispanics and Blacks on the juries of white policemen who are charged with killings of Hispanics and Blacks. So far, white juries, as in Miami recently, have tended to acquit these people, thus leading Blacks and Hispanics to believe that there is no justice for them.

If we are to restore respect for the law in this country, we need to do more than make merely cosmetic changes, more than just hire more police and pass more laws. What is needed is to make our courts models of due process, where the appearance of justice is just as meaningful as whether in fact justice does take place. We must make police more observant as to the dignity and the rights of their fellow man. We must make the courts the true representatives of the people, where one can walk in without the concern that justice is not truely blind and that the rich will ultimately fair better than the poor. We must eradicate all appearances of injustice, of racism, and in this manner restore confidence in people for the law and for our system of democracy.

In a somewhat lighter vein, I will conclude by saying that we must insure justice for all, Black and white, rich and poor alike, and not have it said, even in jest, as Richard Pryor, the comedian, was heard to have commented--that he went into the court to see justice done, and learned that justice meant, "JUST US."

RECOMMENDATIONS

Innumerable solutions have been proposed by many conferees in similar conferences in the past so that much of what I have said, or what I have to say, has been said before. Still, it would do well to repeat it again. If the law and the criminal justice system are to have real meaning to the people and the society in general, these are some recommended solutions:

1. Much more attention must be given to police community relations. Incidents such as the Benitez case in New York and the J. Torres Campos case in Houston cannot go unchecked. Police officers who commit murder and serious crimes against Hispanics must be treated the same way we would treat a serious crime by any other criminal. A police officer cannot occupy a preferential position merely because he is a police officer. Prosecutors and the Department of Justice should show the same zeal in prosecuting them as they do when they prosecute our people.

2. Police should be given sensitivity training and be taught the customs and culture of the Barrios, where they work with our people. They should receive psychiatric and psychological examinations to weed out the sadists, racists, and psychopaths.

3. Rules should be promulgated with respect to the handling of riot situations. The use of guns should be strictly circumscribed. Other weapons which do not cause serious physical injury should be utilized, and only when necessary.

4. Efforts and campaigns should be made to recruit more Hispanics in the police departments and to upgrade and to promote those already there.

5. Judges should be screened and selected, taking them out of the political process and making them more responsive to the people and to their community. There should be more laymen and community persons having input on who should be selected as a judge, and there should be a probationary period to review his performance in office. Most judges tend to be prosecution-oriented because they generally come from the prosecutorial ranks and middle class backgrounds. Greater efforts must be made to remedy this imbalance. Of course, more Hispanic judges are needed at all levels: Federal, state, and local.

6. Prosecutors should recruit minorities and set up satellite offices in Hispanic neighborhoods. Their lawyers should become involved in community programs and interests. Non-Hispanic prosecutors should receive training in Hispanic culture and values and should develop increased sensitivity to Hispanic problems.

7. Public defender and legal aid programs should increase Hispanic recruitment and promotions, should provide for neighborhood officers, and if they cannot get enough Hispanic lawyers, should provide for on-the-job Hispanic paralegals.

8. Prisons and prison programs must be more responsive to the community and the public. Presently, prison budgets are 95 percent for security and 5 percent for rehabilitation. This must be reversed and a proper balance established between security and the needs, health, and welfare of the inmates. More Hispanic guards, officers, counselors, wardens, and programs must be provided. Prison conditions must be remedied to insure minimum health, food, and safety standards compliance.

9. The rate of compensation for jury duty must be raised so that many more Hispanics can participate. A more comprehensive jury selection process must be devised to insure that more Hispanics are called and participate.

10. Law schools must recruit and provide more financial aid and other incentives to Hispanics. Their curriculum must provide more courses in criminal law and community-related concerns.

11. Courts and the entire criminal justice system should keep and should maintain separate statistics on Hispanics.

12. Affirmative action programs and equal opportunity programs which are now required by the government for private contractors should be extended and strictly adhered to with respect to the criminal justice system to insure that the programs are actually implemented as to Hispanic representation in all aspects of the system. Hispanics should be recruited and named also to all advisory and government boards, such as parole, probation, and so forth.

Submitted by

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First Judicial Department

Summary
by:

Honorable Mary Ladd

Final Policy Recommendations

Workshop Participants

COURTS WORKSHOP - SUMMARY

Principles of due process, trial by a jury of one's peers, the right to reasonable bail, the right to confront one's accusers, the right to be presumed innocent until proven guilty in a court of law; all of these are universally recognized as a justification for this country's existence. However, the most important thing which became readily apparent in this section of the conference was that applicability of these principles is far from homogenous within our criminal justice system as a whole.

A substantial part of the reason for this lack of uniformity has been the Berger Court's severe limitation of the federal courts' traditional supervisory powers over the maintenance and protection of an individual's rights and liberties once he becomes embroiled within the Criminal Justice System.

Supervisory role of the federal courts had been expanded and developed through the Fourth Amendment Exclusionary Doctrine by the Warren Court in response to a pernicious attitude on the part of local and federal authorities, which carried with it an arrogant assumption of absolute impunity to totally ignore the rights guaranteed every citizen by the Constitution of the United States.

Warrantless break-ins into private homes, cruel and unusual treatment to compel confessions (remember the old "third degree"?) are two examples. The citizens hardest hit, of course, were those who were easiest to bully: poor people, people with little or no education, and people who understood little or no English. Along the east coast, in the Florida-New Jersey and

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and Midwest migrant streams and in the Southwest and the West, this is to say, the Hispanic. The notorious zoot suit 'riots' of Los Angeles in the late Forties and early Fifties are a rather graphic example of this.

The case of Miranda vs Arizona is perhaps the most famous result of the Exclusionary Doctrine. The Miranda Case had far reaching effects for every citizen arrested without a warrant. But its most significant impact is reserved for the citizen who cannot understand English and is now guaranteed by law the right to have his or her rights explained in such a manner that the citizen can understand what is going on.

The Berger Court has steadily eroded the Exclusionary Doctrine, developing in its stead an Exhaustion of State Remedies Doctrine, whereby one now has to show he has run the gamut of all the state courts and, in some cases, all administrative remedies before he can apply for relief to the federal courts. (E.g., Title VII and Habeaus Corpus Writ proceedings.) The inappropriateness of compelling a citizen to apply for relief to what is usually the same coterie of individuals who wronged him in the first place is to ignore the not uncommon incestuous relationship which exists as a matter of course between many state courts and the local of "good 'ole boys". It is also to ignore a basic tenet of first year law school: Law and the application of law must affect the very circumstances which evolved it.

The state courts are thus assuming the burden of maintaining and protecting the rights of a citizen once he becomes caught up with the Criminal Justice System. Although all the state consitutions do not conflict with the federal constitution and, indeed, most are patterned on the Bill of Rights, the fact remains that fifty state constitutional perspectives makes for as many different applications of civil and criminal procedural law which in turn affects the rights an individual will receive.

Most of the problems addressed in this section of the conference touched upon how the above lack of uniformity affects the Hispanic involved within the Criminal Justice System. It will particularly focus upon the relationship of the Court with this individual.

COURTS WORKSHOP - RECOMMENDATIONS

Part I. BAIL BOND - RIGHT TO REASONABLE BAIL

The present administration of the bail system and the criteria used for release on personal recognizance discriminates against Hispanic defendants.

A. There should be a presumption of release on personal recognizance when an individual is accused of a misdemanor. The prosecution must overcome this presumption before bail is required to be posted.

B. The amount of bail bond should not exceed that amount which is deemed necessary to assure the defendant's presence in court. Any amount of bail in excess of that criteria is punitive.

Part II. THE RIGHT TO HAVE BAIL SET WITHIN A REASONABLE TIME:

The right of the accused to have a reasonable bail set within a reasonable period of time must be insured.

In order to forestall the common and totally unwarranted practice of detaining an accused for an indeterminate period of time without being brought before a magistrate, the following is suggested:

a) A night and weekend magistrate system should be established where feasible, so that the magistrate can consider either the outright release of a prisoner or on his own recognizance, and/or the setting of appropriate bail.

b) In those areas where a night magistrate and/or a weekend magistrate is not feasible; a "stand-by" magistrate system should be implemented, so that the arresting officer can comply with the constitutional requirement that the accused be taken before a magistrate without unreasonable delay.

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c) The magistrate, when the accused is brought before him, must closely review all of the surrounding circumstances, to determine whether the arresting officer in fact made a good faith effort to find a magistrate as soon as possible.

d) In cases involving minor and/or non-violent offenses, a specified maximum time period should be set by the legislature, so that, in the event an accused is not brought before a magistrate within the prescribed time limit, the accused is to be released outright or on his own recognizance.

PLEA BARGAINS

Without commenting on the merits or the lack thereof of plea bargaining, it is recognized that plea bargaining is an integral part of our criminal justice system. Essential as it is to the efficient administration of the courts, plea bargaining is here to stay.

With the above in mind, the following recommendations are made:

a) Plea bargains must be recorded in open court

b) Plea bargains must include the active participation of the judge; he must be cognizant of all terms of the agreement

c) The judge must determine to his own satisfaction that the defendant:

  1) Understands all terms of the agreement and,

  2) Knowingly and intelligently accepts all terms of the agreement

d) Disclosures made by the defendant or his counsel during plea bargaining discussions will not be used against the defendant at at any time.

ALTERNATIVES TO SENTENCING: DIVERSION PROGRAMS AND CONDITIONAL PROBATION

We encourage the use of alternatives to adjudication or diversion programs whenever possible. Alternatives to adjudication alleviate congestion of court calendar, and held avoid the social and economic stigmatization of the offenders accused of minor crimes, and the first time non-violent offender.

a) Diversion programs and programs which include conditional probation should be used in lieu of a final determination of guilt and/or incarceration in the above instances.

b) To facilitate the development and success of the above programs as alternatives to sentencing, the judge should;

1) maintain jurisdiction over the case whenever possible and,

2) utilize local resources in conjunction with the local probation agency.

(Local resources would include community agencies, Mental Health Mental Retardation (MHMR) agencies, counseling agencies, low school and university clinical programs, municipal and county services, and drug and alcohol rehabilitation clinics.)

JURY DUTY

a) The rate of compensation for jury duty must be raised so that many more Hispanics can participate.

b) Jobs of prospective jurors must be guaranteed regardless of length of time required to serve on the jury.

c) A more comprehensive jury selection process must be devised to insure that more Hispanics are called and participate. A system similar to that being implemented in California which uses driver license number (DMV number), in lieu of voter registration rolls, as the basis for jury selection, should be studied with a view toward adopting it as the model.

PRE-SENTENCE REPORTS AS INTEGRAL PART OF SENTENCING

Problem: Pre-Sentence Reports are repeatedly requested by Courts pursuant to plea negotiations. Such a practice has often resulted in total disclosure by the defendant in an unintelligent waiver of Fifth Amendment Rights - In instances where the recommendation of the prosecutor is not accepted, the defendant is then subjected to trial after unintelligent waiver of Fifth Amendment Rights - is further bound by statements and declarations against penal interests made on expectation of sentence and punishment pursuant to plea bargain.

Recommendation: The Court should require that:

1) A pre-sentence investigation be conducted prior to sentencing

2) That it be limited to investigation of only those matters which the Court may deem necessary, i.e., family background; employment history; previous criminal record, if any, etc.

3) That it be specifically ordered that the defendant not be required to provide any facts or instances concerning the Instant Case.

4) The defendant and his counsel will be allowed sufficient time to examine the pre-sentence report and shall be allowed to explain and/or rebut or refute those portions of the reports he/she deems to be factually unfounded.

(An accused is entitled to have his sentence assessed pursuant to a factual pre-sentence report and must be accorded an opportunity to refute allegations he deems to be factually unfounded.) (See U.S. of America v. David Aguero-Seqouia U.S. Court of Appeals, 5th Circuit, July 24, 1980.)

5) Judges should be screened and selected, taking them out of the political process and making them more responsive to the people and to their community. There should be more laymen and community persons having input on who should be selected as a judge, and there should be a probationary period to review his performance in office. Most judges tend to be prosecution-oriented because they generally come from the prosecutorial ranks and middle class backgrounds. Greater efforts must be made to remedy this imbalance. Of course, more Hispanic judges are needed at all levels: Federal, State, and local.

6) Prosecutors should recruit minorities and set up satellite offices in Hispanic neighborhoods. Their lawyers should become involved in community programs and interests. Non-Hispanic prosecutors should receive training in Hispanic culture and values and should develop increased sensitivity to Hispanic problems.

7) Public defender and legal aid programs should increase Hispanic recruitment and promotions, should provide for neighborhood officers, and if they cannot get enough Hispanic lawyers, should provide for on-the-job Hispanic paralegals.

8) Prisons and prison programs must be more responsive to the community and the public. Presently, prison budgets are 95 percent for security and 5 percent for rehabilitation. This must be reversed and a proper balance established between security and

the needs, health, and welfare of the inmates. More Hispanic guards, officers, counselors, wardens, and programs must be provided. Prison conditions must be remedied to insure minimum health, food, and safety standards compliance.

9) The rate of compensation for jury duty must be raised so that many more Hispanics can participate. A more comprehensive jury selection process must be devised to insure that more Hispanics are called and participate.

RESOLUTIONS

1. That Criminal Justice System and related agencies i.e., Department of Labor, Department of Education, National Institute on Drug Abuse, etc., meet the bilingual/bicultural educational/training needs of Hispanic Youth/adult to enter all levels of the competitive job market.

2. Fiscal funding's top priority to be given to ex-offender minority youth/young adult employment, i.e., CETA and YEDPA.

3. That Criminal Justice System policymakers and management increase the number of Hispanics by recruitment, retention, and promotion of staff representative of clients served.

4. That community based organizations and agencies (including grassroots non-government funded organizations and agencies) be directly informed of all solicitations for grant proposals on other funding sources.

5. That college student prison projects and other advocacy groups be allowed access to Hispanic inmate self-help groups.

6. That a network and resource list of Hispanic organizations working in the field of corrections be developed nationally including name of organization, location, contact person, major activities, programs, etc., of the organization.

7. That a National Hispanic Clearinghouse be set-up to collect all data and materials including non-traditional community materials, e.g. (community, newpapers, prison newsletter, legal documents, pamphlets, etc.)

be established and a cataloguing and retrievial system be developed to provide access for both professional and community agencies.

8. That data on Hispanics be collected at all levels of corrections (including affirmative action, recruitment, retention, promotion; why do Hispanics quit correctional work should also be probed).

9. That correctional funding priorities be given to community based corrections and pre and post release programs

10. Statistics on Hispanic inmates be collected that reflect accurately their composition by linguistic and cultural identity rather than by surname or race as black or white.

11. In order to dispel stereotypes of the Hispanic community it is recommended that the Criminal Justice System develop and implement community relations, crime prevention, and support programs involving bilingual/bicultural personnel. That a bilingual/bicultural community advisory group be established in the local, state, and federal level to assist in this endeavor.

12. That language and cultural training be provided to criminal justice agency personnel about Hispanics.

13. That State correctional agencies support CBO's through an established cooperative mechanism whereby they can provide:

    1. Pre and post release support services
    2. Educational services and
    3. Employment/job training and placement services
    4. Non-traditional and coeducational training for Hispanic women inmates.

14. That the Criminal Justice System exert a cooperative and concerted effort with other agencies who serve the Hispanic ex-offender to assure uniformity, consistency and effectiveness.

To help alleviate this condition, we recommend the following: That there be a substantial increase in the number of Hispanic professionals employed in the criminal justice system, including high-level policymakers as well as judges, prosecutors, and other law enforcement officials.

We also recommend that prosecutors establish community offices in Hispanic neighborhoods.

A. Non-Hispanic prosecutors should receive training in Hispanic culture and values and should be required to develop a demonstrated sensitivity to Hispanic problems and concerns relating to the criminal justice system.

B. Prosecutors should establish a series of continuing educational programs reaching out to community groups and organizations to provide information on:

1. Criminal law.
2. The rights of individuals vis a vis the criminal law and the criminal justice system.
3. The steps and procedures involved in the various processes of the criminal justice system, such as:
    a. Arrest
    b. Detention
    c. Trial
    d. Filing complaints

In the late 1960's and early 1970's there were efforts on the part of many law schools to attract students from the different Hispanic communities. For many reasons these efforts have been de-escalated, and in some cases, they have ceased.

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C. Courts and the entire criminal justice system should keep and maintain separate statistics on Hispanics.

i) There should be a national uniform system for maintenance of these statistics.

On arrests and dentention of Hispanics the following information should be maintained and made available to the public.

i) Ethnic/racial identity of individual arrested.
ii) Ethnic/racial identity of arresting officer(s).
iii) Offense(s) involved.
iv) Time of day and location of commission of offense.
v) Disposition of arrest -- for example
    a. Detention or release; length of detention and location of detention; reason(s) for detention
    b. Offense(s) finally charged
    c. Plea bargaining - specific offense pleaded to; reasons for plea
    d. Trial - bench or jury
    e. Ethnic/racial identity of prosecutor, judge, jurors.
    f. Conviction - specific crime
    g. Sentencing or other disposition - judge v. jury - reasons for sentence

D. Where complaints are filed against law enforcement officials for physical abuse of Hispanics, the following information should be maintained and made available to the public:

1. Ethnic/racial identity of police officer(s) involved in incident.

2. Ethnic/racial identity of complaining individual.
3. Nature of offense charged against officer; offense charged against complainant.
4. Time of day and location of incident.
5. Disposition of complaint.
    a. Investigation - internal and external and findings
    b. Discipline - type
    c. Reasons for disposition
6. Previous complaints filed against officer(s) involved -
    a. Type of offense previously charged.
    b. Disposition - reasons.
    c. Ethnic/racial identity of individuals filing previous charges.

Language Barriers in the Criminal Justice System

The right to legal counsel and confrontation is effectively denied when a non-English speaking accused is not provided with a qualified interpreter. The Conference makes the following recommendations:

I. To the Federal Criminal Justice System:

A. That the provisions of the Federal Court Interpreter's Act be implemented in all Federal District Courts.

B. That changes in the federal certification program be made to include language colloquialism and sensitivity factors relating to culture, customs, and traditions of the Hispanic community.

C. If it is determined that certified interpreters are not available, attorneys shall be provided with the opportunity to acknowledge the lack of a certified interpreter as part of the record and to have all interpreted remarks included in a tape recording.

II. To State legislators, Hispanic Bar Association and concerned community organizations:

A. All States must amend or adopt statutes to include the following:

1. An official interpreter shall be appointed in the following cases for persons whose primary language is one other than English, or who are deaf or mute, or both;

a. In any grand jury proceedings when such person is called as a witness;

b. In all criminal court proceedings;

c. When such person is arrested for an alleged violation of a criminal law of the State or any city ordinance. Such appointment shall be made prior to any attempt to interrogate or take a statement.

B. Only officially designated interpreters who have been certified by an examining board may interpret official court room proceeding. Such official interpreter must interpret simultaneously all proceedings in the court room.

C. A list of official interpreters shall be established by the court. The court shall provide a procedure for bi-annual review of the performance and the skills of each interpreter. The court may designate a review panel which shall include at least one person qualified in the interpreter's language.

The court shall remove from the list interpreters who fail to maintain their interpreting skills or who do not conform to the standards of professional conduct for court interpreters.

D. Each State shall adopt a system of certification that will ensure an interpreter's linguistic and professional competence and certify him or her as an official interpreter in the language tested.

The U.S. Constitution provides that a person charged with a crime has the right to effective assistance of counsel. With respect to Hispanic persons, legal representation has been generally inadequate.

At a minimum, the accused's right to effective assistance of counsel should include the following:

1. The right, prior to arraignment, to choose his/her own counsel from a panel of qualified attorneys.

2. The right to obtain a change of counsel where irreconcileable differences between attorney and client exist.

3. The right to adequate resources so that the accused can present a proper defense. These include, but are not limited to the following resources:

A. The right to a competent interpreter to participate throughout the entire process including out of court case preparation, such as investigations, interviews, etc.

B. The right to have the assistance of competent experts, such as investigators, psychiatrists, and the like.

We strongly favor a system where the accused who cannot afford to hire an attorney is permitted to select an attorney of his/her own choice from a panel of qualified and competent attorneys. Until this system is put in place, we recommend that all States adhere to the following model for the assignment of counsel to those defendants who cannot afford to hire one:

A. The formation of representative boards consisting of members, in equal numbers, of the judiciary, private bar and community groups. This board shall set policy for the selection, and monitoring of a panel of attorneys to represent indigent defendants upon assignment.

B. Requests for the assignment of counsel from this panel shall be made by members of the trial bench. However, the actual assignment shall be made by the court administrator, director of the representative board, or the staff of an appellate court.

C. Criteria for placing these attorneys on the panels shall include the following:

1. Experience in litigating cases in the area to be assigned.
2. Familiarity with the linguistic and cultural heritage of the client.
3. Every effort should be made to assign a bilingual attorney wherever necessary.

The criminal justice system as presently constituted, adversely impacts on Hispanic defendants. We believe that current higher rates of arrests, conviction and sentences for Hispanics demonstrate this. In large part this is due to a lack of and/or a misunderstanding of the Hispanic culture, mores, linguistic characteristics and behavioral patterns.

The American Bar Association and the local bars should use their influence to impress upon law schools throughout this country that the conditions which caused them to seek Hispanic students in the 1960's and 1970's still obtain, indeed, they have worsened, creating a greater need for Hispanic attorneys. Therefore, law schools must appreciably increase their efforts to recruit and retain Hispanic students and to provide them with the necessary financial aid.

It is recommended that State legislatures promulgate laws which mandate the automatic expungement of the defendants arrest record where there is no conviction for that arrest, or where the case terminates in a favorable disposition to the defendant.

This expungement shall occur at no expense to the accused and shall require no petition or formal action by the accused, but shall be automatic at the termination of the case.

We recognize that there is a trend in this country, caused mainly by public outcry to rising crime rates, to impose mandatory jail sentences for certain offenses. We vehemently oppose this trend because, although no reliable data has yet been collected, it is clear that Hispanics and other minorities will be most affected by these sentences. Moreover, they remove discretion in sentencing from the judiciary, do not take into account mitigating circumstances and place too much power in the hands of the policemen, who are the ones charged with the the responsibility of deciding whether or not to arrest.

Many States are abandoning the concept of rehabilitation as an objective of incarceration. In so doing, moving away from indeterminant sentences and are adopting the notion of fixed or determinant sentences. While not taking a position on this issue, we are disturbed by studies which indicate that Hispanics are serving longer sentences in determinant sentencing States.

We recommend that further studies be conducted to determine the appropriateness and fairness of this sentencing model.

Under the present system of incarceration in most States, individuals convicted of crimes are jailed in institutions many hundreds of miles from their homes. This makes visits to inmates by their families almost impossible and strains the family relationship at a time when the inmate most needs family and other support. In order to and in keeping inmates' families intact, and to facilitate the transition back into society at the end of the term of incarceration, we recommend that State legislatures promulgate laws which mandate that inmates, where appropriate, be housed in facilities nearest their homes.

RECOMMENDATIONS

1. Much more attention must be given to police community relations. Incidents such as the Benitez case in New York and the J. Torres Campos case in Houston cannot go unchecked. Police officers who commit murder and serious crimes against Hispanics must be treated the same way we would treat a serious crime by any other criminal. A police officer cannot occupy a preferential position merely because he is a police officer. Prosecutors and the Department of Justice should show the same zeal in prosecuting them as they do when they prosecute Hispanics.
2. Police should be given sensitivity training and be taught the customs and culture of the Barrios, where they work with Hispanics.
3. Rules should be promulgated with respect to the handling of riot situations. The use of guns should be strictly circumscribed. Other

weapons which do not cause serious physical injury should be utilized, and only when necessary.

4. Efforts and campaigns should be made to recruit more Hispanics in the police departments and to upgrade and to promote those already there.

We consider the physical abuse of Hispanics by police officers as one of the major problems facing the Hispanic communities around this country today.

In order to deter, as well as to halt the continual wanton murdering of our children by police officers, we recommend the following:

A. Where a police officer has killed an Hispanic, or member of another minority group, that the United States Department of Justice monitor the officer's home police precinct, as well as the local prosecutorial office to ensure that there shall be the same vigorous investigation and prosecution of the police officer, as there is when a private individual is accused of killing another.

B. That State legislatures promulgate laws which make it a felony for a peace officer to fail to report a violation of the civil rights of an individual committed by another peace officer.

With a view toward improving police/community relations, it is recommended that LEAA fund community groups so that these can form community patrols for the purpose of monitoring police activities.

The model for this project should be the United Parents of Santa Fe Springs, California.

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JUVENILE JUSTICE WORKSHOP

Moderator

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"A CASE OF BENEIGN NEGLECT: THE JUVENILE JUSTICE SYSTEM AND THE AT-RISK HISPANA ADOLESCENT"

Presented by:

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"THE JUVENILE JUSTICE SYSTEM - A RESEARCH PAPER ON HOW IT AFFECTS THE HISPANIC COMMUNITY"

Presented by:

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"THE ECONOMICALLY DISADVANTAGED (HISPANIC) YOUTH IN THE JUVENILE JUSTICE SYSTEM"

Presented by:

Enrique Pena
Judge, 327th Judicial District Court
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A CASE OF BENEIGN NEGLECT: THE JUVENILE JUSTICE SYSTEM AND THE AT-RISK HISPANA ADOLESCENT

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This paper will address preliminary findings and observations on the at-risk Hispanic female adolescent, whose special needs, (given cultural and socioeconomic factors) have been neglected by the juvenile justice system. The lack of a meaningful focus on the special needs of minority youth, generally, and Hispanic youth specifically, in the current legislative language of the Juvenile Justice Act of 1974 reauthorized in 1977 (and currently under new reauthorization) has served to compound this insensitivity. More glaring is the fact that the Office of Juvenile Justice and Delinquency Prevention, has not focused its programs and funding priorities on the poor, disadvantaged, and minority-member youth, that it was originally designed to serve. There is a definite lack of a cohesive and cooperative effort on the part of the judiciary, the legislature, and the administrative agency responsible for the administration of program funds that has further exacerbated the plight of the Hispanic female adolescent.

The paucity of data and lack of information available on the socioeconomic conditions confronting the youngest sector of the Hispanic women's population has made appropriate strategies of intervention in the area of juvenile justice and delinquency prevention impossible.

This presentation will focus specifically on the following:

The special needs and problems of the Hispanic female adolescent in the areas of education, employment, health (specifically adolescent pregnancies), the role of the Hispanic family in these contexts and how these areas affect her involvement with the juvenile justice system; and

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Specific recommendations to the Office of Juvenile Justice & Delinquency Prevention in order to target policy and programs more effectively on the unmet needs of Hispanic and minority youth, especially those Hispanic females at risk.

DATA

There are severe limitations in past and current statistical services that prevent an accurate and current picture on the conditions of Hispanic and minority youth generally and specifically for Hispanic female youth. While concerted efforts have been made recently by several major Hispanic organizations to examine the plight of Hispanic youth in such areas as youth employment, training and education, a major emphasis has yet to be placed on the cultural and socioeconomic conditions affecting Hispanic women overall.

The Hispanic community continues to eschew the failure of the federal government to provide quantity and quality information on the diverse Hispanic population that includes Mexican Americans/ Chicanos, Mexicanos, Cubanos, Puertorriquenos, South and Central Americans and other Latinos. The need for more adequate data is necessary to insure an equitable allocation of federal funds for this target population. It is precisely the lack of adequate data and appropriate data policies that severely limits this population's effective participation in policy formulation, planning and evaluation and in the development of appropriate strategies for addressing needs such as those confronting the Hispanic female adolescent

EDUCATION

A recent publication on the condition of education for Hispanic Americans states that the relative youth of the Hispanic population and school enrollment data point to three disturbing trends in the education of Hispanics: Hispanic children enroll in school at rates lower than for non-Hispanic students, they fall behind their classmates in progressing through school and their attrition rates are higher than those of non-Hispanic students.[1]

The Summary Report of the Vice-President's Task Force on Youth Employment issued recently states that a young person who graduated from high school last year has about 9.4 percent chance of being unemployed. For the dropout, the chance rises to 20.5 percent. The report states that two out of every ten white, nineteen-year olds do not have a high school diploma, and one out of every four Black nineteen year-olds does not have one.

> For Hispanic youth, members of the nation's fastest growing minority, the drop out rate is even higher. Two out of every five Hispanic nineteen year-olds lack a diploma. In New York 80% of Puerto Rican youth drop out of school. And young Hispanic women have the poorest graduation rate of any group among the nation's youth.[2]
>
> VICE PRESIDENT'S TASK FORCE ON YOUTH EMPLOYMENT, NOVEMBER 1979

The young Hispanic woman who manages to stay in school and receives a high school diploma does not fare much better, in view of the fact that the educational system does not prepare female students realistically for the lives they are likely to lead. The schools continue to heavily reinforce the traditional sex-role stereotypes in course offerings, curriculum materials, guidance and counseling programs.

Carol Zimmerman, Executive Director of the Arizona-based New Directions for Young Women, sees girls caught in a double bind: If they remain in school, they are molded along lines that limit their future, and if they cut classes or stop going altogether, they can wind up in jail.

"A great many young women out of school drop out because school isn't meeting their needs; because they aren't getting encouragement, because the attitude is you don't really need to learn a career, you don't really need to go out and work, you're going to be taken care of, you're going to marry."

"They find no reason to stay in school, to attend classes. They drop out and become part of the juvenile justice system. The courts say, 'You're a truant, you're a dropout, I remand you to this-and-that facility.'"[3]

At the first public hearing conducted by COSSMHO's Hispana Juvenile Justice Project in San Antonio, Texas to assess the needs and problems as seen by young Hispanic women, the following were among several concerns voiced by young chicanas testifying regarding school:

- the lack of school counselors
- the inaccessibility of school counselors
- the insensitivity of school counselors

- Anglo counselors imposing white middle class values
- the lack of role models
- poor study conditions at home, including the lack of privacy and crowded conditions at home

The concerns raised by these young chicanas point to the lack of positive support systems in the school setting that would make school more relevant. (see Appendix B)

As one of the most pervasive socialization forces in our society, the schools play an extremely limiting role when they offer females a restricted vision of future careers, a narrow range of occupational training, and when they fail to provide positive support systems mentioned above. Young women generally, but especially young Hispanic women, need courses that help them realize their strengths, that instill positive self-images and self-esteem; that confront the personal and societal obstacles before them; that relate directly to their histories, experiences and futures. They need teaching and classroom materials that encourage them to be active, to teach each other, to share, and to develop new skills and competencies. When schools begin to offer this type of alternative education to our young Hispanic women, then, and only then, will school become a learning and meaningful experience for her.

EMPLOYMENT

The Summary Report on the Vice-President's Task Force on Youth Employment alluded to earlier contained several critical revelations relative to the Hispanic female adolescent. It states that if one is young, female, a drop-out, from a poor family or a member of a minority group, chances for finding a job are extremely dismal. In essence, a poor Hispanic female adolescent has the odds stacked pretty well against her.[4] (See Appendix A)

As one of the most comprehensive studies available to date on youth employment, the Report contains the following findings regarding young women, drop-outs, minorities, and poor families:

> young women - By age 18, women begin to encounter difficulty in finding a job, and by age 24 they drop significantly behind. Once employed women earn less than a man who does the same job. By age 26, only 42 percent of women are still working as low paid operators or unskilled laborers, while 80 percent of all employed women are at the bottom of the labor market in clerical jobs or working as operators or service workers.
>
> drop-outs - The unemployment rate for high school drop-outs is two to three times as high as the rate for high school graduates.
>
> minorities - Given three measures of equity, whether you are employed, how much you earn and what kind of work you do -- Hispanics and Blacks trail in all three.
>
> poor families - Youth from poor families tend to enter the labor market at lower levels than their peers and are likely to face further behind as time goes on.[5]

The employment picture painted by these findings is indeed a bleak one, especially for the young Hispanic female who comes from a poor family. The dynamic changes in the labor force participation rate by Hispanic women comes at a time when the growing Hispanic labor force is increasingly being channeled into labor markets limited in terms of occupational opportunities and geography. Young Hispanic women especially are confronted by the intense economic pressures in addition to continuing to perform many or all of the traditional family and household roles. [6]

Recent findings suggest that the Hispanic female plays a crucial role that may also hamper her employability.

> Expectations of Hispanic female roles in their families and communities demand that they conform to the Hispanic tradition of compliance with male-dominated familial, social, sexual, and religious conventions. Hispanic women are often in conflict; they face an American society which speaks to increased freedom for women while also facing "old-fashioned" restrictions in their own homes. These mutually exclusive demands not only result in personal conflicts but also in conflict within the family. It is important that the Hispanic community recognize these Hispanic females must express themselves both as Hispanic women and as American women. The resolution of these conflicts requires that Hispanic society itself recognize the new equality and freedoms for women both in the home and in preparation for the job market. The paradox of Hispanic society seeking greater freedom and employment access, while restricting membership of their own women to traditional roles, cannot long survive. Therefore, educational and employment training and job placement programs designed specifically to place Hispanic young women in managerial, professional, and technical jobs are necessary to facilitate their transition into the mainstream of America society.[7]

HEALTH

(Hispanic Teenage Pregnancies)

For the young Hispanic female dropout who comes from a poor family, the additional burden of a teenage pregnancy acts as another barrier to employability.

The Hispanic community should be deeply concerned about the increasing number of pregnant teenagers, the overall rise in premarital sexual activity among our youth, the intergenerational conflict that may erupt as a result of adolescent pregnancy, and the dubious future prospects that may confront teenage parents and their children, especially for the young Hispanic female whose social and economic background offers her limited choices.

In the absence of definitive data in public agencies at federal, state and local levels, it is difficult to determine the extent of pregnancies, abortions and live births among teenage Hispanic women.

COSSHMO presented testimony on the Adolescent Health Services and Pregnancy Prevention and Care Act before the Subcommittee on Select Education Committee on Education and Labor in the U.S. House of Representatives that shed some light on major health and social dimensions of this problem.

Some of the findings of that testimony together with census data emphasized the following facts relevant to young Hispanic women:

- Hispanics are a young population with a median age of 22.1 years compared to 28.6 years for the general population.
- About 44 percent of all Hispanics are under age 18, compared to 31 percent for the general population.
- The fertility rate of Hispanic women (except among Cuban-Americans who tend to be an older group than most Hispanics) is about 20 percent above that of the total child bearing population.
- Family planning services needed by Hispanic women tend to be those needed by the general population because the level and kinds of contraception use tend not to be different.
- Special studies of the proportion of illegitimate births show a need for social services to Spanish-origin mothers living in poverty areas of large cities.
- Like the need for family planning assistance, the need for social services to children born out of wedlock is proportional to economic status.
- A need for improved family planning services delivery to Hispanic women is shown by the below-average proportion of them receiving such care from organized services and other sources.

> The depressed socio-economic conditions that prevail among our Hispanic communities - at rates far out of proportion to the rest of the U.S. population - make it extremely difficult to provide comprehensive, sustained care to pregnant adolescents and to help them prepare for the future. Further, these conditions make it difficult to mount effective measures for prevention through such youth serving systems as the schools and community groups; systems that do not reach or sustain contact with our Hispanic youth.

From a cultural dimension, the problem of adolescent pregnancy is exacerbated by the fact that most young Hispanic women come from Catholic families where pregnancy, abortion and live births invoke not only familial attitudes but deeply ingrained religious beliefs as well.

Hispanic families tend to be close-knit and religious; expectations of moral performance are usually more rigorous than those in the society at large. Pregnant Hispanic teenagers not only face problems with their families but, here too, Hispanic women themselves may view their pregnancies as proof of their own immoral character; like the Hispanic ex-offender, many have introjected the family's value system and therefore accept the family's perceptions of having "fallen", resulting in guilt, depression and low self-image.[8] This low self image may act as a propellant of young Hispanic females into delinquency.

For the young woman who engages in sexual intercourse of her own volition, the school hardly offers a more understanding environment than home, should she become pregnant. Many schools suspend pregnant students or encourage them to "voluntarily" withdraw. Pregnant girls are urged to enroll in the YWCA, get home tutoring, or go to a home for unwed mothers. Unfortunately many end up hanging around the streets where they are likely to develop serious problems -- by remaining undereducated, unskilled or having frequent run-ins with police. Run-ins with the police translate into involvement with the juvenile justice system.[9]

The social and economic conditions discussed herein facing young Hispanic females cannot be ascribed to the cultural characteristics of the family and community. There are significant cultural differences between the Hispanic family and community and the Anglo family and population, yet the socioeconomic conditions facing young Hispanic women suggest that these conditions are not in conflict with, but exist in spite of, both the cultural characteristics and the social and economic necessities of the Hispanic family.[10]

The social and economic conditions of young Hispanic women are a reflection of structural and institutional problems external to the Hispanic family and community. They are distinct from the cultural characteristics of the latter, rather than inherent in the culture. In that sense the extent to which national policies and programs are a reflection of the cultural and socioeconomic foundation on conditions of the Hispanic population is also an indicator of the capacity of such policies and programs to address critical needs of Hispanic communities. The general condition of the Hispanic family, of men and of women, young and old, is one, however which suggests that such policies and programs do not incorporate or address the cultural and socioeconomic foundations of the Hispanic community.[11]

That the youngest women in their community are victimized disproportionally by systemic factors over which they have no control, and for which they are not responsible, emphasizes the reality that the "Hispanic problem" is not one that emerged from with the Hispanic community, but rather is one that evolved from outside of the community and from within the structure and institutionalized weakness of the larger society and economy.[12]

CONCLUSION

As a result of the varied nature of the problems herein discussed surrounding Hispanic female youth and because of the diversity of their environments, and the heterogeneity of their cultural backgrounds, no single approach to preventing juvenile delinquency among them suffices. Instead, programs for young Hispanic women must be developed in appropriate language and cultural contexts. Hispanic youth, especially females, must be helped to become aware of a rich cultural background that instills pride and positive self-images. They must be given opportunities to participate in meaningful, rewarding social roles that would insulate them from involvement in delinquency by giving them a positive status in conventional roles and behavior. They must be helped to grasp a share of their own destinies rather than accept a "second class" role that society has forced upon their parents. In short, the now delinquency prone Hispanic youth must be helped to grasp a new view of himself and his and her capabilities; then helped to activate the leadership potential that can emerge from this improved self-concept.

Active intervention into the cultural and personal self-degradation of the Hispanic youth - intervention that will prevent anti-social behavior - can best be effected in Hispanic communities by those agencies which are dedicated to the problems of the Hispanic community and sensitive to their needs for communication and identification and which address the cultural and socioeconomic foundations of the Hispanic community.

SPECIFIC RECOMMENDATIONS
to the
OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

- The targeting of funds on special minority youth populations at risk, specifically Hispanic females and on communities and neighborhoods most in need.

- Strengthening and improving the capacity of ethnic, racial and disadvantaged youth serving agencies and organizations in addressing the special needs of at risk Hispanic females.
- Increasing minority women participation, specifically Hispanic women, on state planning processes.
- Increasing the knowledge and data base on minority and disadvantaged youth, specifically Hispanic female adolescents in the justice system, while at the same time increasing the availability and application of successful model programs and approaches reaching and serving these youth.

The following are recommendations submitted by COSSMHO in testimony presented to the Subcommittee on the Constitution on the Reauthorization of Juvenile Justice Act of 1974, as amended in 1977 :

1) Disproportionate attention is being given to non-chronic, low-risk and status offenders to the detriment of urgently needed programs for "high-risk" offenders, defined as youth not usually reached through counseling, job programs, halfway homes, retaining or other forms of professional supervision, youth who are -- for the most part -- urban poor, and minority. For too many of these, incarceration is still regarded as the appropriate institutionalized response.

2) Increased efforts are needed to divert status offenders (defined as those whose conduct would not constitute a crime if committed by an adult) from adult detention facilities. These facilities continue to be filled with minority youth adjudicated as delinquent. Community-based organizations which have the capacity to best serve these youth in terms of providing social and community supports should receive priority attention in policy and funding.

3) Improved distribution of funds under the Act should be achieved by including criteria which would target these resources on communities and neighborhoods that have disproportionately high levels of juvenile crime and delinquency, school drop-outs and suspensions. For this purpose, we urge a significant set-aside of formula grant and special emphasis funds. In the allocation of these set asides, priority should be given to community-based programs and services concerned with the needs and interests of minority and disadvantaged youth and having the demonstrated capacity to provide services in appropriate language and cultural contexts.

4) As a complementary thrust, the Office of Juvenile Justice and Delinquency Prevention should increase

support for projects aimed at improving the capability of ethnic and racial minority youth serving agencies and organizations -- at national, regional, and local levels -- to plan, develop, implement, and evaluate programs that prevent and control crime and delinquency in the above communities. Technical assistance should also be an integral part of this effort.

5) Increased minority representation and participation in decision making processes under the Act should be assured by requiring that:

- State advisory groups include substantial representation of youth serving agencies, organizations, and groups working in communities and neighborhoods having disproportionately high levels of crime and delinquency, school drop-outs and suspensions in the state.
- In the development and implementation of the state plan, ethnic and racial minority agencies, organizations, and groups representative of the needs and interests of youth in the above areas be consulted.

6) In order to increase the knowledge base on minority and disadvantaged youth and to promote the exchange of information on successful and innovative programs and

approaches serving them, the mandate for the National Institute on Juvenile Justice and Delinquency Prevention should be expanded to include:

- Research and state-of-the-art reports on the needs and status of these youth in the justice system.
- The collection and dissemination of information of model approaches and innovations developed and utilized by youth serving agencies, organizations, and groups having extensive experience in reaching and serving these youth.

Submitted by:

Frances M. Herrera

COSSMHO
Hispana Juvenile Justice Project

FOOTNOTES

1. The Condition of Education for Hispanic Americans George H. Brown, Nan J. Rosen, Susan T. Hill, National Center for Education Statistics, and Michael Oliva LULAC National Educational Service Center, Inc.

2. Summary Report Vice President's Task Force on Youth Employment, III Reading, Writing, Arithmetic, p. 21.

3. "A Double Standard of Justice", Juvenile Courts treat young women differently, Peg Cohen, Civil Rights Digest, Spring 1978, p. 13.

4. Summary Report, Vice President's Task Force on Youth Employment, II The 80's Happen This Year, p. 12.

5. Ibid. p. 12.

6. "Hispanic Youth: An Emerging Force", National Conference on Hispanic Youth Employment, section on Hispanic women, p. 35.

7. Ibid., p. 51 (Synopsis - Hispanic Females)

8. Ibid., p. 62 (Synopsis - Pregnancy among Hispanic Youth)

9. "A Double Standard of Justice", Peg Cohen, p. 12.

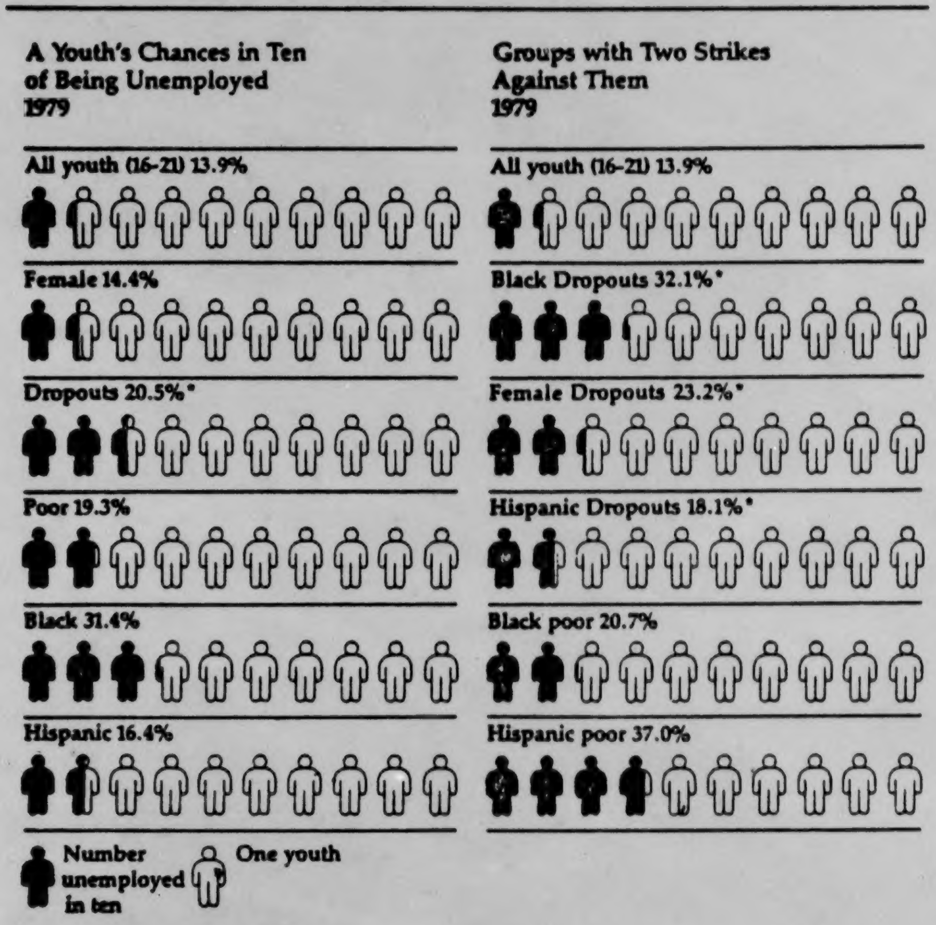
10. "Hispanic Youth: An Emerging Force", National Conference on Hispanic Youth Employment, section on Hispanic women, p. 35.

11. Ibid., p. 35.

12. Ibid., p. 36.

APPENDIX

APPENDIX A



Source: BLS
**1978 Data; 1979 Data not available*

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APPENDIX B

14-A Sunday, July 20, 1980 THE SAN ANTONIO LIGHT

TINA BALDERAS (R) is comforted by Mercedes Perez as she tells a Saturday hearing of her difficult childhood. Her comments came during the San Antonio hearing on Chicanas and the juvenile justice system. (Staff Photo by Len Parness.)

Hearing Asked Ways to Aid Adolescent Hispanic Girls

By MICHELLE STANUSH

-A lack of positive success models and a strong self-image are obstacles faced by the Mexican-American female adolescent, the executive director of a national Hispanic organization said in San Antonio.

Rodolpho B. Sanchez, national executive director of the National Coalition of Hispanic Mental Health and Human Services (COSSMHO), was here Saturday attending a COSSMHO-sponsored public hearing on Chicanas and the juvenile justice system.

"We need to find innovative ways of addressing the needs and priorities of the Mexican-American female adolescent so we aren't 'johnny-come-latelys' after they've committed a delinquent act," Sanchez said at the hearing at the Mexican American Unity Council, 2300 W. Commerce St.

The director said supportive systems such as counseling services relevant to cultural and family environments must be established to help battle problems faced by the young female Mexican-American.

Sanchez noted that both young male and female Hispanics are victims of socio-economic conditions, bilingualism and discrimination — factors that hamper their chances of success in the educational world.

In addition, the female Mexican-American may also have to deal with a "strong macho role that might be played in the family," Sanchez said, adding that this is not an overriding factor.

Sanchez said one of the purposes of the public hearing was to promote an interaction between Mexican-American parents and adolescents. This discussion can help toward the formation of model programs to help prevent juvenile delinquency, adolescent pregnancy, alcoholism, drug abuse and the high unemployment rates of Mexican-American youth, Sanchez said.

The hearing panel was co-chaired by Dr. Louis Tomaino, dean of the Worden School of Social Service, and Monica Santos, assistant superintendent of the Ayres House.

Included among the 30 persons testifying were teen-age representatives from the YWCA Project Strive, the Mexican American Unity Council program for economic development through community improvement, United Way's Youth Alternatives and Centro del Barrio.

Moderator for the hearing was Frances Herrera, project coordinator for the Hispana Juvenile Justice Project. San Antonio is one of three cities in the United States selected as hearing sites on the issue of female Hispanics and the juvenile justice system. Other cities were Detroit and Miami.

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APPENDIX C

The COSSMHO Reporter

**Published by the National Coalition of Hispanic
Mental Health and Human Services Organizations**

**Volume 5, Number 3
December 1979**

COSSMHO Launches New Project On Hispana Youth Concerns

Hispana adolescents and young women in Cuban, Latino, Mexican American, and Puerto Rican communities are the focus of a new COSSMHO youth services and advocacy project being conducted under subcontract with the National Young Women's Christian Association (YWCA).

The goal of the project is to increase COSSMHO's capacity, at the National Office level and throughout its membership network, to work to prevent as well as treat delinquency among this special population.

In achieving this, the project will identify and assess the particular needs of young Hispanas and will work with community agencies and groups to assist in developing or expanding plans for culture-specific programs serving them.

A special aspect of the project is the wide range of opportunities it will provide to Hispana adolescents and young women to participate in issues identification and related program development at national and local levels.

Under terms of the subcontract, project activities at the local level will be targeted on young Hispanas in three cities with major Hispanic concentrations – San Antonio, TX; Miami, FL; and Detroit, MI. COSSMHO members in these sites and surrounding areas, as well as existing youth advocacy networks, will be invited to take part in the planning and implementation of these activities.

COSSMHO is one of six entities under subcontract with the National YWCA which has received a grant from the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, to assist national organizations in further developing or expanding their program activities for minority and disadvantaged young women and adolescents.

The other five organizations are the American Red Cross, the National Congress of American Indians, the Organization of Pan Asian American Women, and two black-oriented groups – Links, Inc., and the National Association of Milliners, Dressmakers, and Tailors.

In carrying out its project over a 22-month period, COSSMHO will:

- Establish an eight-member National Hispana Advisory Committee representative of the cultural and geographic diversity among Hispanic communities. The young Hispanas selected will include one from each of the three target cities.
- Hold three public hearings, one in each of the target cities, with major involvement of young Hispanas in their planning, conduct, and follow-up.

The purposes of these are to assess the needs of young Hispanas in the community, identify successful operating programs which could address these needs as well as current gaps in services, heighten the awareness of local officials and youth serving agencies to the concerns of young Hispanas, and promote new leadership roles for young Hispanas in the area.

The hearings will be designed to involve, in addition to Hispana youth, a range of agencies, programs, and groups in the community, as well as local, state, and regional officials of youth programs, together with representatives of youth advocacy organizations.

- Work with community agencies and groups in the target cities to assist in developing program plans, specific to the needs and culture of young Hispanas in each locale, that will address juvenile delinquency prevention or treatment needs.

In addition, stipends will be provided for Hispana youth employment in youth advocacy and community outreach positions at selected agencies in the target cities.

Coordinator for the project is Frances M. Herrera, formerly with the Mexican American Legal Defense and Education Fund (MALDEF).

A graduate of the University of Texas Law School in Austin, she has had extensive experience in working on legal issues affecting Hispanas, in particular Chicanas, and legal needs of Hispanic offenders in the criminal justice system.

Most recently, at the MALDEF regional office in Washington, DC, she was involved in legislative advocacy and research.

Previously, at the MALDEF regional office in San Antonio, she served as coordinator of a prisoners rights project at the Bexar County Jail. Prior to that, she clerked for MALDEF's Chicana Rights Project.

During law school she completed several internships, including clerking at the local legal services office and the office of students' attorney, as well as a summer assignment with the Camden Regional Legal Services/Farmworker Program in New Jersey.

COSSMHO members and others in the field are urged to submit names and resumes of Hispanics with expertise in juvenile and criminal justice systems and in youth services and advocacy for inclusion in the COSSMHO data bank.

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APPENDIX D

COSSMHO'S HISPANA JUVENILE JUSTICE PROJECT: A SUMMARY

CONCEPT

Involvement in youth services has been a priority for COSSMHO since its inception. The National Hispanic Youth Symposium held during COSSMHO's 1978 National Hispanic Conference provided a new forum to explore and implement a more active participation in the youth services field. The Symposium also placed emphasis on the unique experiences of at-risk Hispanic female adolescents and their unmet needs. In follow-up action to address these needs, COSSMHO negotiated and received a subcontract award from the National YMCA to conduct an Hispana Juvenile Justice Project. This innovative effort focuses on Hispana youth advocacy in the area of juvenile justice and delinquency prevention.

GOALS

The project seeks to increase the capacity of COSSMHO and its nationwide membership network to prevent and/or treat delinquency among young Hispanic women in communities throughout the United States. It also aims at increasing awareness of the needs of young Hispanic women among national, regional, and local officials and youth service agencies impacting on the quality and quantity of services available to them.

OBJECTIVES

- Establish a National Hispana Juvenile Justice Advisory Committee

  This committee of young Hispanic women, representative of the cultural and geographic diversity of Hispanic communities, will advise on project development and on ways to increase linkages between the project and other activities of COSSMHO and its membership.

- Plan and Conduct Three Local Public Hearings in Three Target Cities: San Antonio, Texas; Detroit, Michigan; and Miami, Florida

  These hearings will serve as the key tool to identify specific needs, develop interest among Hispanic agencies with the potential to develop programs, and create a greater awareness of the needs of young Hispanic women in the area of juvenile justice and delinquency prevention.

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- Plan and Conduct a National Public Hearing and Workshops at the 2nd National Hispanic Youth Symposium to be held concurrently with the COSSMHO 1980 National Hispanic Conference

  This Conference will draw participants representing Mexican American, Puerto Rican, Cuban-American, and Latino Communities from all parts of the country. Through the Conference, COSSMHO will broadly publicize the findings of the local hearings, as well as preliminary efforts to identify and develop model programs. Youth and other Symposium participants will have an opportunity to become involved in the Conference program and share their insights and work with all those attending the Conference.

- Select Local Hispanic Agencies and Create Local Advisory Groups to Develop Model Program Plans

  Reports of project findings in the above activities will be distributed to Hispanic community agencies in three target cities (and to other organizations, as appropriate), along with an invitation to apply for consideration as a lead agency in developing a local model program plan for addressing young Hispana needs. Selection of the lead agency(ies) will be made by project staff in consultation with the project's National Hispana Juvenile Justice Advisory Committee.

  Each responding agency will submit its proposed work plan, including a description of the effort to be undertaken, a delineation of the level of commitment required, and steps for formulating a local advisory group to the proposed project.

- Provide Technical Assistance for Developing Local Model Program Plans

  Technical assistance in developing local model plans will be provided to selected lead agency(ies) in each city by the COSSMHO project staff and the YMCA Juvenile Justice Project staff.

- Provide Technical Assistance in Identifying Funding Sources and Seeking Funding for Local Model Program Plans

  Technical assistance will be provided by COSSMHO project staff and the YMCA Juvenile Justice Project staff in identifying, contacting, and working with potential funding sources to secure funding for local model program plans.

OBSERVATIONS

Few national or local youth service or adovocacy programs have the awareness, capacity, or experience to plan and provide services to Hispanic female adolescents in appropriate language and cultural contexts. Although many local Hispanic agencies are capable, willing, and eager to develop these types of youth service/advocacy programs, they are in need of assistance in identifying and securing adequate resources to do this. Thus, COSSMHO's Hispana Juvenile Justice Project will seek to:

- Increase the awareness and understanding of the needs of young Hispanas among national, regional, and local officials and youth service agencies;
- Impact on the conditions that endange young Hispanas, and increase the quality and quantity of services available to them;
- Improve the nature, extent, and effectiveness of COSSMHO's work to prevent and/or treat delinquency among young Hispanic women in the United States.

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APPENDIX E

PUBLIC HEARING SPONSORED BY COSSMHO's HISPANA JUVENILE JUSTICE PROJECT

In each of the three target cities selected, a local public hearing will be held in the first project year. These hearings will serve as a key tool to identify specific needs, develop interest among Hispanic agencies which have the potential to develop programs, and to create a greater awareness of the needs of our young Hispanic women in the area of Juvenile Justice and Delinquency Prevention. As an education and awareness activity, these local public hearings will bring together Hispanic youth, local, state, and regional government officials, community leaders, Hispanic agencies and organiations, other youth-serving programs working in the area, and foundation representatives. Presentations from the diverse perspectives among these participants will be made at the hearings in addition to their submission of written testimony. The presentations will focus specifically on the following:

- problems and needs as seen by young Hispanas
- model programs that could work on behalf of young Hispanas
- barriers to development of programs by Hispanic agencies
- barriers to utilization of traditional services by young Hispanas
- status of city-wide efforts to provide delinquency prevention and treatment services.

Beyond their value as education and awareness activities, the hearings will lay the groundwork for the development of three model programs specific to the culture and needs of the young Hispanas in each of the target cities, which will focus on prevention and treatment of delinquency.

Results of the hearings will be compiled in reports and presented at the 2nd National Hispanic Youth Symposium to be held concurrently with COSSMHO's Third National Biennial Conference, "Hispanic Bluepint for the 80's," in Washington, D.C., September 17-21, 1980, at the Shoreham Hotel. This Youth Symposium will focus on the leadership potential of young Hispanics for the decade ahead, and will explore major issues confronted by this growing population. At this time, 2000 Hispanic participants in the health and human services field from around the country are expected to attend the Conference.

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THE JUVENILE JUSTICE SYSTEM - A RESEARCH PAPER ON HOW IT AFFECTS THE HISPANIC COMMUNITY

By:

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Prepared for:

National Hispanic Conference
on
Law Enforcement and Criminal Justice

The Shoreham Hotel
Washington, D.C.
July 28-30, 1980

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A PRESENTATION BY MIGUEL DURAN

THE NATIONAL HISPANIC CONFERENCE
on
LAW ENFORCEMENT AND CRIMINAL JUSTICE

Shoreham Hotel, Washington, D.C.
Monday, July 28 through Wednesday, July 30, 1980

Preface:

In order to convey a clear picture of the Hispanic youngster and how he relates to the Juvenile Justice System, I have decided to present you with a collage of pictures.

The collage of word pictures will include statistics merely to punctuate some of my remarks. The research is not deep or scholarly. It is more a questioning of others in the various fields on which I will be reporting in order that their testimony confirm my suspicions.

In order to defend myself in advance I offer the following. I am not an expert on the Hispanic and the Juvenile Justice System in the United States. I do know quite a bit about the Hispanic and the Juvenile Justice in Los Angeles County so I will speak from that frame of reference. I also do not represent the point of view of the department I work for, therefore, I speak as a private citizen with an ax to grind and a captive audience on which to "lay my trip" as it were.

As to my credentials, I offer the following:

Education:	Masters Degree in Public Administration - California State University, Los Angeles
	Bachelor's Degree - Social Science - California State University, Los Angeles

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Work Experience: Twenty-five years with the County of Los Angeles

Present Position: Chief, Youth Services Section, Department of Community Development

Past Positions: Probation Department - Counselor, Deputy Probation Officer, Senior Deputy Probation Officer

Human Relations Commission - Consultant

Chief Administrative Office - Senior Budget Analyst

Chief Administrative Office and Department of Public Social Services - Director of five (5) Multi-Services Centers

Lecturing and Learning: Professor, Cal State University, Los Angeles, Urban Studies "Youth and Gangs" - Teaching

National Center for Community Crime Prevention Southwest Texas State University, San Marcos, Texas Teaching and Lecturing

Volunteer Work: Los Angeles Eastside Sports Association - Secretary Coalition of Children and Television - Member Fireman's Blue Ribbon Committee - Member LAPD Police Commission Hispanic Task Force - Member Joint Advisory Committee on State Prison Facilities and Incarceration Alternatives - Member

Chapter I

Picture One:

The Hispanic as the recipient of law enforcement

1. Is law enforcement equal in the Hispanic area to the Anglo community?

Generally speaking - No. The Hispanic areas are overly policed. They serve as training grounds for rookies.

2. Is the Hispanic treated fairly when he is questioned on the streets?

Generally speaking - No. Their civil rights are violated from the time they are stopped, without probable cause, to the time the curbside judges decide on release or hold.

3. Is he treated fairly when questioned in a police station?

It depends on the circumstances. If there is a Deputy Probation Officer assigned to the station as an intercept officer, chances are he will be turned over to him for counseling and disposition.

4. Can an Hispanic actually ask for and receive proper, dignified treatment if he goes to seek aid at a police station?

Many times it depends on his approach. Generally, you find the stereotype behind the desk, with a brusque and disinterested manner.

5. Can an Hispanic actually say that he has no fear of going into a police station?

It depends on the individual but by and large the Hispanic feels apprehension.

6. Can an Hispanic adult tell his children (and mean it) that the policeman is his friend?

I know most of us want to believe it when we say it. We say it but we bite our tongue.

Picture Two:

The Teenager.

The current teenager of Hispanic background who lives in a barrio has been brought up to distrust the motives of law enforcement agencies . . . . police, probation, parole, the courts.

The distrust was first placed in them by their parents who told stories about encounters with the Justice System where they came out second best.

As the youngsters grow and have cause for contact, their distrust is cemented by personal negative contact experience.

One bad experience is enough to overshadow all the good an agency or an agent might do.

Picture Three:

Chip.

To a people with a collective chip on its shoulder the size of a telephone pole, everyone in the system is against them. Here's some quick examples:

1. The police stop a person on the streets, they decide to arrest instead of counseling and releasing.
2. He uses his one phone call to call a bail bondsman - Money. He calls a lawyer - Money.
3. He stands to lose his job if he doesn't get out in time to go to work or if he works for a place that has a policy against keeping people on the payroll who get in trouble with the law.
4. If he doesn't have savings he heads for a loan company or tries to borrow money from friends or relatives. Either way, he's in debt.
5. He finally gets his day in court. There is no interest in the case on the part of the judge. As a matter of fact, he sees no case and decides in favor of the defendant. Case dismissed!
6. As they walk out of the court room, the lawyer is telling the late defendant not to be angry "Justice has been served, you're a free man!"
7. "Yeah, I'm free to earn money to pay off a lawyer, bail bondsman and a loan company. On top of that I've suffered due to my self pride. One thing too. I'll never get close to anyone who smells like the law."

Picture Four:

The Probationer - The Parolee.

How does he view law enforcement? "I broke the law" - I paid my debt to society by allowing myself to accede to due process of law. This means I allowed myself to be sent to prison. I agreed to conditions of release. I signed papers stating that I would adhere to the rules set forth in my contract with the State. I have several adjustment problems to contend with.

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Now I ask you. Please keep law enforcement off my back so that I can work on my problems. To me law enforcement should be just that "law enforcement", not a pick that pricks away at my rights as a human being.

Picture Five:

The Majority Community.

These questions and thoughts are raised in letters to the editors, at conferences, or thought but not asked. They are raised by white folks who feel threatened, white folks with missionary visions, and just plain bigots. But we, the Brown colored folks also ask ourselves these questions and make these comments:

1. Why is there so much lawlessness in the Hispanic barrios?
2. If they want to fight so much why don't they join the army. Better still, go to Mexico where fighting is legal.
3. If they wouldn't have so many fiestas on weekends the police would not have to deal with them so often.
4. Hispanics, especially Mexican, are all right, it's just that they are emotional, fun loving people by nature.
5. They don't know when they're breaking the law. After all they are basically Mexicans and don't know our American customs that well. You would probably act a little wild too if you lived in a barrio. Que loco!

Picture Six:

Law Enforcement.

Law Enforcement as viewed by the police officer charged with the responsibility of seeing to it that the law is not broken and act if it is.

1. I am a patrol officer. I am in daily contact with citizens who are placed in stress situations of one kind or another.
2. I make decisions, on the spot, on how to handle problems of law enforcement.

3. My mission is to protect and to serve.
4. I respond to calls for assistance from the community. I arrest, if necessary, in order to keep the peace.

Picture Seven:

Hispanic-American and Police Community Relations in the Hispanic-American Box - Tradition.

A child comes home and complains that a policeman hit him. "Mijo that's the way it is. If you don't want to get hit, don't be where a policeman is. Mira mijo, police don't like Brown skins and we don't like police." "But why not papa?"

Law and order in a Mexican Barrio is administered by white police. They have absolute authority and back it up with a club, a fist, or a gun.

They don't come in trying to understand our way of life. What may be overlooked as a crime in white societies is rarely overlooked in our society.

Discrimination of the dominant white society towards the Brown skinned ones is evidenced through the actions of the police.

In the meantime, young men from within our midst who go into police work, many times turn against their own kind. They become physically more brutal, seemingly embarrassed by constant law breaking and non-acceptance of the White man's way of life. They, many times, end up negating their heritage and less willing to interpret community needs to heads of law enforcement!

Before we leave this collage and begin on another let me throw out one more thought (by the way, I agree that my montage is a little skewered but then what does your picture album look like?).

Law and Order.

Law: Is an instrument invented by man which is used to guide him and his peers as he goes about the business of living out his days and nights.

Order: That's what most people want, even if they have to kill you to maintain it.

Chapter II

Picture One:

Poor Adults - How this state of being affects their children.

School: School, to the child, takes up half his working day. He comes from home knowing a little bit, but here is where he learns to socialize. He asks the questions "What is a boy? What is a girl? How do I dress?" A wise person, his own age tells him that "you dress according to what's in at school. You know, Pendeltons, Khakis and Hush Puppies. You act according to what is in at school. You know, you act cool see, you check out the chavalas but you shine them on."

In East Los Angeles education is below par in comparison to the rest of the county according to both students and teachers. The community is divided on this issue. "Concerned Parents" feel that the school administration is maligned and not to blame for educational shortcomings in their schools. They feel that the "unconcerned parents" are to blame. They label a liberal a person who got a poor education when he went to school, who doesn't fee conditions have changed, who wants to change the system and wants people to know he is a Mexican.

M.E.C.H.A. are organizations of Hispanic students in High Schools and college fighting for better education. They attempt to promote education awareness among their peers. They want Hispanics to realize that college is for them too. They try to help teachers and the school administration to promote better relationships. Sometimes they are well received, mostly they are not.

Picture Two:

The Neighborhood - Commonly known as the barrio or "Hood."

How do you ease your way into a barrio and why? In a lot of cases you're born into it, in other cases your parents move you into it and finally, why not?

It's a way of getting out of the pad for awhile. You find out what's happening and you get to act out "what's happening." Acting out what is happening can lead to jail for stealing, using dope, and violence.

This subculture is relegated to certain areas of the county. The Hispanic lives here by choice or because of economic necessity. A different life style from the rest of the County exists here in order that the young may survive in their "made by them" environment. They are into gang banging, low riding, dope use and pushing, pre-marital expression is openly tolerated.

Picture Three:

Recreation.

High Schools do not push Hispanic athletes for college and university scholarships. The end results are no local athletic Hispanic heroes to emulate. When an Hispanic does make it as a jock in college, he rarely is picked up by the Pros. Again, no visible Brown skinned heroes to emulate. At least not in the same numbers as Blacks as examples. No heroes, means a talented youngster will either give up or search elsewhere for recognition. Generally, it won't be on college campuses.

There is an outlet for the youngster in organized sports in his community, but this is for the really talented, easy to work with youngster whose attitude is pliable.

Scouting is just now changing its rules in order to fit the barrio youth into its package. I have a suspicion that they are losing bodies in the majority community so they are looking into areas which they "shined on" in the past to fill their quotas. They make noises like they really care, but I wonder. Loss of revenue might be the real reason, not affirmative action.

Teen posts are extinct. Police called them Federally funded hangouts for gang youth who conducted wayward activity on the premises. They were right. Most of the time these gangsters broke laws on the premises thus hastening the demise of a good thing in its pure form.

Recreation Center people have their job down to a science. they cater to the very young or the very old. Anyone in the in-between ages they don't program for. They're just too much trouble and they (as workers) are not really skilled enough to handle teenage action.

Picture Four:

Cultural Differences - What do you buy and why do you buy what you buy?

If you're a Mexican immigrant you buy a Chevie. In the old country to own a car is a mark of affluence. In the Estados Unidos it is a mark of affluence plus it makes you like your neighbor. Your're his equal. It's a way of keeping up with the Gonzales'. Now it will be hard to tell you apart. People want to assimilate, be a part of the "in" group as soon as possible. They attempt to be like those they live around.

Picture Five:

Consumer Education - Who needs it?

Television sells everything to everybody; radio sells everything to everybody. They make you feel good. They're talking to you. They make you feel like you're somebody!

"Que suave" For a low down payment you can have a color TV. For no money down you can own a Transistor, AM & FM radio with attachments for an (8) eight track. Everybody can afford these items.

How can community services organizations combat these commercials? How can they caution people hungry for material goods to go easy, that a lot of what is offered will enslave you.

Picture Six:

Religion.

The Catholic Church is by far the number one religion in the Hispanic Barrio. People flock to church on Sunday. They don't listen to the sermon. They go out of a sense of guilt or duty to their parents. They think fleetingly of God, Jesus Christ and patron saints, but more and more they are questioning their relationship, maybe not to God but to the church as a bureaucracy. They are finding the church lacking in terms of social services.

Other religious orders are finding converts because they offer more than hope, they offer religious assistance on a contemporary basis.

Picture Seven:

Accuse.

In closing out Chapter II of my word picture book, let me do it on a somber note.

As a group, the Hispanic has taken the blame for their shortcomings. They admit that too many of their numbers are on welfare, disproportionate amounts in jails, too many in cantinas, and not enough in educational institutions. It is their fault that they lack business acumen. It is their fault that they lack industriousness. Lately, a look at their shortcomings by people who know how to look and what to look for, have seen the total picture as shortcomings equated to lack of equal opportunity.

1. You're allowed to stand in line for a job - doesn't mean you're going to get hired.
2. You're allowed to take the promotional exam but it doesn't mean you're going to get promoted.

The Hispanic relegates himself to the back of the bus in terms of visibility for opportunity and after he gets to the back the bus driver makes sure he stays back there.

This is where the rank and file Chicano - Hispanic finds himself. Perhaps he can articulate these conditions to his children, but probably not. At any rate, as we move into the panoramic view of the Juvenile Justice System, what you have seen you should keep in mind as a measuring device when we talk about the System in relation to the Hispanic.

Chapter III

I don't know how the rest of the country sees law enforcement. In Los Angeles they call law enforcement "The Man." But this is a misnomer. The "Man" is the Chamber of Commerce. The "Man" is whoever dictates the economic or money making climate. Law enforcement is an inanimate object, a club that the "Man" wields in order to keep people in line and thereby establishing and maintaining a balance which they can control.

To me, if the "Man" wanted equality for the Hispanic he could decree equality and enforce it with that big stick! Simplistic - yes, naive - maybe, feasible - yes. Practical for him - probably not!

At any rate, that's where we're at today as a people. The rest of my paper concerns itself with the subject at hand.

The Juvenile Justice System is composed of the following:

1. Police
2. Detention
3. Probation
4. District Attorney
5. Corrections
6. Parole

All play a part, an important part in leading a young person through their maze. Please take note of two observations:

1. These agencies all operate after the fact. They are poorly equipped to deal with before the fact programming, so talk about it but don't do anything about it.

2. One County Supervisor noted that an excess of 380 million dollars was expended in Los Angeles County in one year by the Juvenile Justice System. As to whether the expenditures were cost effective, we have no way of knowing.

Having given you a tentative identification of the Juvenile Justice System, I will now move on to a particular type of person in Los Angeles, the gang member. I will attempt to detail.

Let me bring you up to date on gangs in the Los Angeles County area.

1. There are over seven million people in the County of Los Angeles.

2. Of that amount, one quarter of a million are ages 13 to 18.

3. Of that number, 10 percent will get in trouble with the Juvenile Justice System, one way or another, during the year.

4. As noted in Federal Statistics, 60 percent of adult crime is committed by teenagers.

5. Crimes such as murder, rape, extortion, robbery, burglary, auto theft, arson and drug abuse are becoming very common among youth in general.

6. In Los Angeles County, at the front of these "youth in general" by way of wayward activity are the gang oriented youth.

7. How many gangs are there? I can identify or rattle off the names of approximately 100. We know that an exhaustive count would yield another 250.

8. How many gang members are there? The following is a quick method at arriving at an educated guesstimate:

    1. Multiply 3 x 25. This gives you 75 members per gang. Each gang is generally divided into three subgroups and in chronological age order. That's how to get that number. Now multiply 100 gangs times 75 members per gang and you have 7,500 members.

    2. There are male gang members currently involved in gang type activities.

    3. Estimate ten girls per each subgroup then multiply by three. This gives you 30 girls per gang. Multiply these 30 by 100. This adds up to 3,000 girl members. Add 7,500 to 3,000 and you will reach a total of 10,500.

    4. Now we estimate potential and peripheral members who may join a gang during the year. The recruitment process is constant because the need to fill the ranks is always there. They, the recruits, may come as young as ten years of age. We estimate potential and peripheral members as 15 per subgroup or 45 per gang times 100 gangs and this equals another 4,500. Now we have about 15,500 members estimated but we aren't through yet.

    5. There are practicing gang members who are adults. Someone over the age of 18 is considered an adult. Their number amounts to 5,000.

    6. There are gang members in all juvenile and adult justice system institutions. They number a conservative 2,000. The total counts adds up to 22,000 members. Please note that I am talking only about Los Angeles County.

9. Where are these gangs located? There are 80 cities in the County of Los Angeles. There is an equal amount of unincorporated area.

    Approximately 60 cities and an equal number of unincorporated areas boast or moan about the fact that they are plagued with gangs.

10. One statistic stands out very sharply, too glaringly to be ignored. Of the 1,000 murders committed last year, 200 were thought to be youth gang related. These victims were both active gang members and innocent by-standers.

11. For the past seven years, gang activity has been at the highest peak ever in Los Angeles County.

    We are at a critical stage as I speak now. Perhaps that is why this body has convened, because they too are aware but because this critical stage has endured for so long, it seemingly has become the norm.

    The Media knows it, but it isn't news to a community that feels unaffected. The Police know, but their method of combating the problem has got to be one of waiting for violations so they can arrest.

    The affected Barrios, Ghettos and "Hoods" are learning to live with it since they don't seem to want to fight it.

It hasn't escaped our notice that what is current as a way of life in Los Angeles County seems to have a rippling effect throughout the state, but it is now leaving the State of California and blossoming in other states. We have gone from East Los Angeles and Watts to the entire County of Los Angeles, to a large majority of the counties in the State of California, to several states in the Union, til now, as I speak, we have a national problem on our hands.

In Los Angeles we can no longer prevent the cancer, it is there. We, therefore, must program to restrain it, arrest it before it contaminates further.

If we, collectively, heed these obvious warnings, we can work preventively in other areas. But, to do this, we must quit thinking of hand wringing, fault finding and sociological paraphrasing as action, and get down where it's at.

No doubt most of what you hear today will be reiteration of the several speakers who came before me. If so, we are coming from the same place, if not, it will be something else for you to consider.

I would like to believe that justice is blind, that minorities are incarcerated and kept there because they committed crimes and therefore are being punished. I would never want to believe that there is racial prejudice. I would rather believe that those entrusted with meting out fair and impartial sentences are governed by pure motives, though they are ignorant in terms of the person that stands before them.

In this conversation I will attempt to limit myself to the three issues which concern us.

1. Total society can be blamed for not being aware of how the Justice System works. And when it is aware it feels powerless to do anything about it so moves in no direction. The minority in the society must share the blame. Too long have they sat on their collective, apathetic "fundies" hollered obscenities at the system but promptly shut up when asked to translate frustration into self-help action.

   On the other side of the coin, we have the Justice System Institution. They are not mandated at all times by law but by the vested interests of a "controlling" community.

   I have heard well-meaning judges defend their decisions to send a minroity youngster to an institution because:

   1. There was no advocacy agency or organization that would take care of him.

   2. The youngster, even though coming from a united family, could not be controlled by the parents because they were so inadequate themselves.

   3. The youngster standing before him looked undernourished.

   4. The youngster had language and other educational handicaps which could be corrected in an institution.

5. The environment he lived in was not conducive to a proper up-bringing. Surely then, this youngster would definitely benefit from the largess the State of California had to offer him.

2. At the adult level, the state legislation is still fumbling around trying to decide on determinate sentences as opposed to indeterminate sentences. For now, they have resolved the problem by bringing back the determinate sentence.

The following is probably true of all people going through correctional institutions but probably more so, where minorities are concerned:

1. If the areas where minorities live are heavily patrolled, specialists in various crimes are assigned and the order is to "clear the streets." You are going to have more arrests and probably more convictions.
2. The courts are overcrowded so that judges cannot judge each case on its merits, therefore you have justice by expediency. We end up reading "police accuse the courts of revolving door justice" and you also end up reading on the back page of our metropolitan papers that a group of Hispanic leaders were upset with some judgment against some poor Hispanic soul.
3. There is more than this, but I only want to point out these two facts so that I might get on with what I consider as an alleviation, by a total community, of the problem.

Prevention:

We do not need another two or three million dollars to research the fact that poor living conditions contribute to delinquent behavior. What we do need are well funded, well managed, properly trained personnel to work with youth in a preventative manner.

Rehabilitation:

We know that regardless of what we do, we are not going to be completely successful in prevention work, therefore, when a young person has to be sent to a correctional institution, programs should be made available to the inmate calculated to help him return more amenable to direction and more aware of his responsibility for his actions in the community.

After-Care:

There has to be in the community after-care programs for youngsters released from correctional institutions. If this is not accomplished, then the young person becomes a prime recruit for the adult correctional institutions.

Behind every recruit to an adult correctional institution there is an army of adult experts who are failures. But the biggest failures are the ones who promise to administer properly - and don't.

Do you realize that if prevention programs were adquate, if rehabilitation programs were adequate, if after-care programs were adequate, that the recruiting source from the minority community would become a trickle instead of the gusher it now is?

Do you also realize that if the above were true, police would have more time to protect and serve, instead of waging war and that judges would be free to judge according to individual merit, thus making less ludicrous judgments.

In conclusion, I would like to say that much of what I have stated before coming to my topic of prevention, rehabilitation, and after-care is hearsay. I have heard this said by police, judges, probation officers, parents, youth and concerned citizens. I have seen programs on TV address this topic. To this point I have witnessed and have been party to the hand wringing which has passed for action in the past. -Y Por Mi Parte - Ya Basta!

Chapter IV

Recommendations:

The following are one sentence recommendations that we can examine. They are recommendations that, if followed, may lead to amelioration of conditions I have enumerated.

1. Federally funded capacity building conference facilities to train (educate) community workers - proto-type - National Center for Community Crime Prevention Programs, Southwest Texas University.

2. Evaluation and support of the volunteer group by the community based organization.

3. Evaluation and support of the community based agency by the Juvenile Justice agencies.

4. Legislation designating to the Juvenile Justice System that they allocate funds for prevention type programs.

5. Juvenile justice community review boards for accountability. 1 - Program; 2 - cost effectiveness; 3 - fair and impartial treatment.

6. Federal policy and guidelines prior to granting funds should be written with the help and support of the agency requesting funding.

7. Year around youth employment in both private and public sector - as it stands now, summer employment for youth is used as a means of narcotizing them so they won't riot.

8. Education of the Medias as to who the Hispanics are. The Metropolitan papers as well as community papers - proto-type - Eastside Sun.

9. Campaign by Hispanics to "introduce" Hispanic youth to contemporary and past Hispanic-Americans - old world heroes are OK but there is no real tie in with them by a youngster.

10. For people "involved" with the Hispanic and the whole field on Criminal Justice - we must invoke the "Peace Corps" concept. Don't consult unless you are willing to involve yourself. Don't tell me how to make adobe bricks - get in here and mix it with me.

Thank you.

Submitted By
Miguel Duran

THE ECONOMICALLY DISADVANTAGED (HISPANIC) YOUTH IN THE JUVENILE JUSTICE SYSTEM

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THE ECONOMICALLY DISADVANTAGED (HISPANIC) YOUTH IN THE JUVENILE JUSTICE SYSTEM

PROBLEM OF NOMENCLATURE

I am going to be quite candid. I had great difficulty in dealing with the term "Hispanic." I believe that one of the most difficult problems that confronts anyone making a study of the culture of the American Southwest is the selection of an appropriate term to designate the Spanish-speaking inhabitants from the Gulf of Mexico to the Pacific coast. That geographical area has been expanded today to include South and Latin America, Cuba and Puerto Rico.

I believe that history teaches us that at different periods of time and for different reasons, such terms as "Native", "Spanish-American", "Spanish", "Mexican", "Mexican-American", "Hispaño", "California", and lately the more controversial "Chicano" have been used.[1]

I find it rather difficult to deal with these labels simply because I find them either too restrictive or partly inaccurate. The terminology that we use today is often misleading as it seems to me that we are confusing race and nationality. And of course, we must remember that the many names that are applied to millions of Americans who speak Spanish in the Southwest demonstrates an attitude of mind and in some cases a political persuasion rather than a clear concept of race, culture, and/or nationality.

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Adding to this complication of course, is a surge of activism among our Spanish speakers in the Southwest who are choosing names by which they want to be known. Some have decided to be known as 'Mexican-Americans", others as "Chicanos", and the old colonials in New Mexico as "Spanish-Americans" or as 'Hispaños".

Adding further to this confusion is the fact that the term 'Mexican-American" is not entirely accurate. I suppose that the selection of the term "Americans of Mexican descent" would be more accurate. Of course, this would not include the descendants of Spanish families who have been living in the Southwest since colonial days. They use the term "Spanish-American" or Hispaño".

It has been suggested by some writers[2] that the selection of the term 'Hispaño" is an accurate compromise as it connotes common culture characteristics of people from Colorado to Mexico. While it does not mean Spaniards, it is a purely cultural term with no national or racial overtones. The term simply means that we speak Spanish, that we share basically the same cultural values and in some instances, we may even have a common philosophy of life.

However, for the purpose of this paper, I have chosen the term "economically disadvantaged" youth in the juvenile justice system.

I have done so on purpose irrespective of race, culture, and/or nationality, simply because these persons, adults and youth, represent a minority group in disproportionate numbers in the criminal and juvenile justice systems in America. I may add, these numbers are increasing at an alarming rate.

PROBLEM OF THE JUVENILE JUSTICE INFORMATION SYSTEM

The problem is known to every conscientious policy maker, planner, administrator, and researcher in the juvenile justice system:

> Juvenile justice is a governmental section that peculiarly ... lacks the regularized and comprehensive information procedures requisite for either policy-making or public administration. It is difficult to think of any other section of government where so little information is routinely and systematically generated, reported on, and analyzed for use in planning and administration.[3]

Unfortunately, there is no accurate statistical information available on the characteristics of youth that are processed through the juvenile justice system. A major obstacle is the fact that there are no accurate population figures available on youth according to racial classification nation-wide. As an example, in our community of El Paso County, persons who are arrested are only reported by age, sex, and race -- race being divided into two groups, either white or black.

However, a recent published Special Report[4] presents new evidence extracted from court records bearing out criticism that the juvenile justice system is prejudicial against minorities.

Let me briefly summarize what that report revealed:

* Members of racial minorities are processed by the courts differently than their white counterparts.

* Holding constant the reason for referral, members of racial minorities still are processed differently than white youth.

* Members of racial minorities ages 10 through 14 are more likely to be processed than their white counterparts within the same age range.

* Minorities are much more likely than whites to have had prior referrals.

* Minorities are much more likely than whites to have had prior referrals during the current year.

* Minorities are more likely than whites to be detained.

* Minorities are more likely than whites to be charged with crimes against people.

* Minorities are more likely than whites to be processed with a petition.

* Whites are more likely than minorities to be processed for status offenses.

* Minorities are more likely than whites to be institutionalized.

* Cases involving whites are likely to be processed more quickly than cases involving members of racial minorities.

During a hearing before Senator Birch Bayh, OJJDP Administrator Ira Schwartz said "these are some very troubling pieces of information, and issues that I think the office must address in the future". In December, 1979, at his confirmation hearing, Senator Bayh asked Mr. Schwartz to review OJJDP programs to see if funds were being allocated where they were needed most -- a response to a charge by Robert Woodson of the American Enterprise Institute that diversion and prevention efforts were being directed largely at white-middle class youngsters. During the same hearing Mr. Schwartz stated that he had commissioned the Honorable William S. White, Juvenile Judge from Chicago, Illinois, and Orlando Martinez, Head of the Colorado Division of Youth Services to conduct a study for him.

In summary, information is one of the most underdeveloped, yet one of the most needed resources within the juvenile justice system.

PROBLEM OF ARREST AND DETENTION OF THE ECONOMICALLY DISADVANTAGED JUVENILE

Traditionally, too little attention has been paid to the relationship between state power and individual liberty where the juvenile is concerned. This relationship is critical because given the protective role of the juvenile court, when authority is exercised to do something for a youth, it generally begins by doing something to him as well.[5]

The taking into custody and subsequent detention of juveniles are, in my opinion, the most critical stages of juvenile proceedings.

It may be that the powers of law enforcement officers to intervene in the conduct of juveniles ought to be broader than it is in the case of adults. Also, perhaps a law enforcement officer should be able to take a juvenile into custody when he has reason to believe that the child is delinquent or in need of supervision for whatever reason. However, this discretionary power by law enforcement agencies has led to great abuses when dealing with the economically disadvantaged juvenile.

The policeman on the beat, or patrolling, has practically unlimited discretion to arrest juveniles, to release them after arrest, or to ignore violations of the law. In 1969, the Office of Juvenile Delinquency and Youth Development reported that "the juvenile justice system in recent years has come under close scrutiny ... critics contend that there is one law for the poor, and another for the rich." In the same report it was pointed out that numerous studies had established that there was a differential handling of youthful offenders based on neighborhood and economic circumstances by law enforcement agencies.

There is no question, and I believe the new evidence extracted from court records that I previously mentioned, demonstrate that the economically disadvantaged youth (minorities) are more likely to be involved in the juvenile justice system -- beginning with the initial arrest and subsequent detention in disproportionate numbers to the general population.

Let me cite an example: During the period of time from 1976 to 1980, 68.4% of all juveniles arrested and referred by law enforcement agencies to the El Paso County Juvenile Detention Home had a Spanish-surname. Of greater importance was the fact that the majority of these arrests (taken into custody) were made in areas of our community that have the highest percentage of minority group concentrations.

Once the juvenile has been taken into custody and the decision has been made not to release the juvenile to his parents, the juvenile is usually referred to a secure juvenile detention facility. There is no argument with the fact that some juveniles require secure detention between the time of arrest and court disposition. However, as pointed out previously, minorities are more likely than whites to be detained.

I have found from my experience that the decision to detain or not to detain is based on many factors: age, sex, race, socio-economic status, family stability, present activity, number of prior court referrals, severity of offense and type of referral agency.

What is lacking once again in this area is the empirical analysis and information of the type of juvenile that is detained, specifically as it relates to the economically disadvantaged juvenile.

Let me give you an example. In a 1975 analytic report concerning the processing of juvenile offenders based on data collected in Denver during 1972, the author, while conceding that minorities are overrepresented in official delinquency and court statistics, and while further conceding that although minorities were more apt to be detained than white youth, arrived at the conclusion that the differences were not substantial.[6] The author then concludes that the allegations of many writers that minority group members are significantly more apt to receive unfavorable treatment from juvenile court functionaries than are whites fail to gain support from this data. However, the author overlooks the fact that, when combined, the different ethnic classifications of the study (Spanish heritage, black, and other) account for 75% of juveniles detained versus 19% of whites detained.

In summary the Report goes on to conclude that the attributes of socio-economic status, present activity, and the number of previous court referrals appear to have been related to the detention decision outcome: lower status (income) juveniles, youths not working or in school, and children with a previous history of court referrals were more apt to be detained than were their peers.[7]

In the area of detention, just like arrests, there is incomplete, and many times, a complete absence of information which prevents a definitive study of detention decisions. Absence of data, crucial for making any changes in the present detention system, is a major block to solving the problem. There are a number of states that do not even bother to keep any detention statistical documentation which indicates an indifference to the problem. The statistics in other states which are compiled are usually so incomplete that they are useless for planning personnel, facilities or anything else.

PROBLEM OF THE COURT
WITH THE ECONOMICALLY DISADVANTAGED JUVENILE

That the children of the poor constitute the vast majority of persons coming to the attention of the juvenile courts, has been well documented and may be attributed to the greater degree of official scrutiny to which the lives of the poor are subjected.[8]

"It's a poor man's court" Martin Tolchin, a reporter for the New York Times wrote, referring to the New York Family Court. This judgment was correct when it was written in 1964 and it is correct today. For evidence we need look no further than the waiting rooms of the courts and their population. Each morning a hundred stories of poverty are suggested by the faces and personal effects of those who wait to appear before the judges. The cold atmosphere of the room only intensifies the feelings of helplessness, fear, and frustration which accompany poverty. "Courtrooms are bare; toilet walls are defaced. The court's waiting rooms resemble those of a hospital clinic. Negro and Puerto Rican families predominate and many regard the trappings of justice with bitterness and suspicion."[9]

The Honorable Florence Kelly, Administrative Judge of the New York Family Court, put it: "No one is at home in this court." A poor family brought before a juvenile court judge journeys to a foreign land. In New York City, the judge, a relatively well-paid member of the upper middle-class, is a college graduate and the possessor of a law degree.

He is thus, separated by education and way of life from most of those who are paraded before him every day. The probation officer to whom a youngster may be assigned is also a college graduate, though he may have been recruited from the same economic and social class as the youngster in his charge. He has by effort and energy risen from it. Even the court officers and clerks are better paid, and to some extent better educated than most of those who come with their children. The poor are certainly not "at home" in this atmosphere with these people. Few of the judges, probation officers, and court attendants are truly "at home" in their surroundings. At the end of the day most of them return to relatively stable families and middle-class life. The problems of communication which this estrangement creates are not widely understood and rarely confronted.[10]

There is no question that crime and delinquent acts are to be found among the children of the upper and middle-classes, but it is also an undeniable fact that official rates of delinquency are higher among the poor. Pertinently in the great cities of our nation the overwhelming number of children processed through the juvenile court are the children of the poor. The upper and middle-classes show surprising agility in keeping their children, whether they committed a delinquent act or a status offense, out of court. Instead of having a petition filed against an offending middle-class youngster, the parents make restrictions to the victim. In other cases, the upper and middle-class youths never get to court simply because the parents have the financial resources to privately arrange corrective treatment. Furthermore, even after an adjudication, a person with the financial resources often arranges for the use of private facilities, facilities that are not available to the poor.

In 1967 the Task Force on Juvenile Delinquency, made an assessment of the juvenile court and stated: "...the conclusion that the great hopes originally held for the juvenile court have not been fulfilled. It has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of juvenile criminality, or in bringing justice and compassion to the child offender. ..."[11]

The Report goes on to state various reasons for this "failure" if indeed the system has failed. Among them were:

* The community's continuing unwillingness to provide the resources -- the people and facilities and concern -- necessary to permit children to realize their potential and prevent them from taking on some of the undesirable features typical of lower criminal courts in this country.

* The low status that the juvenile court judgeship enjoys in the eyes of the Bar.

* The great number of judges that were not properly educated or trained to assume the juvenile court bench.

* Scarcity of psychologists and psychiatrists.

* Lack of treatment because of the unavailability of adequate individual and family case work.

- Lack of dispositional alternatives.
- Warehousing of juvenile offenders in institutions.

PROBLEM OF LEGAL REPRESENTATION OF THE ECONOMICALLY DISADVANTAGED JUVENILE

In Gideon v. Wainwright [12] the U.S. Supreme Court made the following observation:

> Reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.

In the case of In Re Gault[13] the U.S. Supreme Court concluded that the Due Process Clause of the Fourteenth Amendment required that in proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.

At least at this point in time, speaking in the abstract, the economically disadvantaged adult or youthful offender is entitled as a matter of right to an attorney at the expense of the state if he cannot afford one.

However, the real issue is whether effective counsel is being afforded. The effective assistance of counsel is fundamental, for without it persons appearing before the courts are not likely to be able to assert any other rights they possess. As has been stated "if the right to counsel guaranteed by the Constitution is to serve its purpose, defendants cannot be left to the mercy of incompetent counsel."[14]

While the statement may be harsh, throughout this country, the economically disadvantaged are represented by incompetent counsel -- incompetence seems to be the rule and not the exception. Chief Judge David L. Bazelon of United States Court of Appeals for the District of Columbia Circuit, has stated that defendants having court-appointed counsel have little more than "a warm body with a legal pedigree."

There are three common types of legal representation afforded the economically disadvantaged offender. Perhaps the most common, usually in your larger jurisdictions, is the public defender system. Then we have the court assigned private counsel, and the third form of representation is the privately controlled and financed voluntary defender system.

There is a wealth of information in studies on the three different types of legal representation.[15] However, from my own practical experience both in and out of the courtroom, I have come to the conclusion that the quality of legal representation that the economically disadvantaged youth received in the juvenile justice system is dependent on the judge. I had an occasion to visit a juvenile court in a large urban jurisdiction in Texas, and I was appalled at the way the judge was handling juvenile cases. It took the judge no more than three minutes to dispose of a juvenile case which in some instances resulted in institutionalization. On the other hand, I witnessed the same judge handle a case where the youthful offender was represented by retained counsel and the hearing took 45 minutes before placing the youngster on probation.

This is not to say that all economically disdavantaged youth are not effectively represented. There are a number of projects around the country that demonstrate that it is possible to provide a high quality of representation and the lawyers operate in much the same way as do members of large law firms. The program enjoys professional autonomy, professional freedom and responsibility, and is able to attract and hire the most able lawyers.

Of course it is not enough to hire attorneys who want to "help the poor." In my experience I have found that these lawyers are attracted to the poor in the abstract, and eventually become indifferent and in some cases even repelled by, the individuals who make up the poor in the concrete. Also, we have those lawyers who want to bring about a change -- "change the system." What happens in these situations is that these lawyers are all too quick to subordinate the needs of the poor to larger, more romantic ideological goals.

The court-assigned private counsel also has its advantages and disadvantages. In 1978 and 1979, the Houston Post ran a series of critical articles on the court appointment system. Some of the issues that were highlighted included: using the attorney appointment power to reward political supporters; compromising the adversary relationship between the defense counsel and the judge (an uncooperative attorney may not be reappointed); and causing waste of public funds.[16]

There is no question but that there is a lack of confidence in court-appointed attorney systems. Even the offender is prejudiced against assigned counsel, whether they be court-appointed or part of the public defender system.

PROBLEM OF DISCRETIONARY TRANSFER TO CRIMINAL COURT OF THE ECONOMICALLY DISADVANTAGED JUVENILE

In many states there are provisions in the law which authorize the trial of juveniles as adults.

Transfer or waiver is defined as the procedural devise by which the juvenile is removed from the jurisdiction of the juvenile system and transferred to the criminal justice system for trial and sentencing.

There are usually three methods or devices that are used to accomplish transfer: the first is legislative waiver, which means an automatic waiver for certain offenses, or for certain age and type of offense combinations. The second is judicial waiver, which means that a juvenile court can transfer a juvenile from the juvenile court to an adult court under statutory standards, such as age, offense, or other criteria.

Finally, there is executive waiver, which allows the prosecutor to charge a minor as an adult or as a juvenile on the basis of age, offense committed, or some other criteria. Under this last method, the court may be given the right to object and in other cases no consent is required of the juvenile court.

In the area of transfer/waiver, like in the area of arrest, detention, and legal representation, there is a lack of information and/or statistical data in order to establish the demographic and social characteristics of juveniles that are being transferred to the adult criminal system.

In 1970, in Houston, Texas, two psychologists wrote an article in the Houston Law Review[17] in which the authors indicate that the certification procedure is sometimes a tool of the district attorney's office for plea bargaining, and that there is some discrimination in selecting individuals against whom certification petitions will be filed. In that study the demographic breakdown revealed that out of eighteen (18) certification proceedings, fifteen (15) of those juveniles were black.

In another report, which represented a cooperative effort by the New York State Division of Criminal Justice Services and the New York City Criminal Justice Agency, the impact of the juvenile offender statute* in the five boroughs of New York City was examined and a total of 981 of the 1,124 arrested juvenile offenders were interviewed. The statistical highlights of the study are as follows:

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* On September 1, 1978 a statute became effective in New York State which extended criminal responsibility to thirteen, fourteen, and fifteen year olds arrested for certain violent felonies. This law was further amended in 1979. Under the law, "juvenile offenders" may be prosecuted in the adult criminal justice system. However, the statute also provides that under certain circumstances a juvenile offender may be removed to the Family Court. Such removal can occur virtually at any point in the court process.

* The typical juvenile offender was a 15 year old (67 percent), black (71 percent), male (92 percent).

* Arraignment release status appears to be related to: seriousness of charge, defendant's sex, and school attendance.

* Of the cases disposed in criminal court, 35 percent were transferred to the Supreme Court, 50 percent were removed to family courts and 15 percent were dismissed; this pattern varied from county to county.

CONCLUSION

Perhaps the principle barrier to reform the juvenile justice system as it affects the economically disadvantaged youth of America, is lack of knowledge of the actual workings of the system by our communities or even the legal profession. The public generally tends to have a grossly over optimistic view of what is known about the phenomenon of juvenile criminality and of what, even a fully equipped juvenile justice system, can do about it.

What kind of juvenile justice system is it, where the final judgment that society makes which primarily affects the poor -- the hearing in court -- takes less than five minutes? In the final analysis there is no escaping the question of race and crime.

In conclusion, Ralph Ellison, in "Invisible Man", perhaps gets to the point when he says:

> I can hear you say, "What a horrible, irresponsible bastard!" And you're right. I leap to agree with you ... But to whom can I be responsible and why should I be, when you refuse to see me? And wait until I review how truly irresponsible I am.

Submitted By
Enrique H. Peña

FOOTNOTES

Footnote 1: Campa, Arthur L., Hispanic Culture in the Southwest, University of Oklahoma Press, 1979.

Footnote 2: Ibid.

Footnote 3: Vincton, R., Downs, G., Hall, L., "National Assessment of Juvenile Corrections Report" reported in Juvenile Justice Digest, January 16, 1976, p. 7.

Footnote 4: Smith, Daniel D., Special Report: A Summary of Reported Data Concerning Young People and The Juvenile Justice System, prepared for OJJDP, National Center for Juvenile Justice, 1980.

Footnote 5: Davis, Samuel M., Rights of Juveniles: The Juvenile Justice System, (Second Edition, 1980).

Footnote 6: Cohen, Lawrence E., Who Gets Detained? An Empirical Analysis of the Pre-Adjudicatory Detention of Juveniles in Denver, Criminal Justice Reserach Center, Albany, New York, SD-AR-3 (1975).

Footnote 7: Ibid. p. 23.

Footnote 8: Paulson, Monrad, "Juvenile Courts, Family Courts, and the Poor Man", 54 California Law Review 694 (1966).

Footnote 9: Fox, Sandford J., Modern Juvenile Justice, American Casebook Series, West Publishing Co., (1972).

Footnote 10: Ibid. p. 4.

Footnote 11: Task Force Report: Juvenile Delinquency and Youth Crime, President's Commission on Law Enforcement and Administration of Justice, pp. 7-9 (1967).

Footnote 12: Gideon v. Wainwright, 372 U.S. 335 (1963).

Footnote 13: In Re Gault, 387 U.S. 1 (1967).

Footnote 14: See Chief Judge Bazelon's majority opinion in U.S. V. deCoster No. 72-1283 decided October 4, 1973.

Footnote 15: Wheeler, Gerald R., "Reflections on Legal Representation of the Economically Disadvantaged: Beyond Assembly Line Justice", Volume 26, Crime and Delinquency, July, 1980.

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Footnote 16: Ibid. p. 324.

Footnote 17: Hays and Solway, "The Role of Psychological Evaluation in Certification of Juveniles for Trial as Adults", 9 Houston Law Review, 709 (1972).

RECOMMENDATIONS

The following are my recommendations to improve the juvenile justice system. Some of the recommendations are based on recommendations found in the IJA-ABA Joint Commission on Juvenile Justice Standards.

1. Nomenclature
   - a) The word "Hispanic" should be defined, not in terms of race.
   - b) The definition of the term "Hispanic" should be broad enough to include the economically disadvantaged.

2. Juvenile Justice Information System
   - a) State legislatures should promulgate a comprehensive statute, mandating the collection, retention, dissemination, and use of information and records pertaining to juveniles.

3. Arrest and Detention
   - a) Considerations of race, national origin, religious belief, cultural difference, or economic status should not determine how police exercise their authority.
   - b) All police departments should establish a unit or office specifically trained for work with juveniles.
   - c) Police departments should be mandated to develop training programs focusing on problems of minorities and their cultural differences.

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d) Juvenile probation agencies responsible for intake services (detention) should develop written guidelines and rules with respect to detention procedures without regard to race, national origin, religious belief, cultural differences, or economic status.

e) Probation agencies should be mandated to develop training programs which focus on problems of minorities and their cultural differences.

4. The Court

a) Juvenile intake, probation and detention services should remain in the judicial branch of the government.

b) The judge of the juvenile court should:

1) Be appointed/elected from the highest trial court level;

2) Possess the necessary skills (training, demonstrated interest, experience) to deal with juvenile problems;

3) Be full-time;

4) Not be rotated;

5) Possess a cultural sensitivity and understanding of the problems of minorities;

6) Be bilingual (Spanish); and

7) Be required to attend judicial training programs, focusing on juvenile problems.

c) An interpreter should be made available by the court when the juvenile and/or his parents do not understand English.

5. Legal Representation

a) The court should have the responsibility of determining whether the juvenile has effective counsel, at all critical stages of juvenile proceedings, by inquiring:

   1) Of the juvenile and the attorney concerning number and length of conferences that have been held;

   2) Of the attorney for the juvenile concerning the investigation, if any, that has been made prior to the hearings;

   3) Of the attorney for the juvenile concerning the legal preparation, if any, that the attorney has made on behalf of the juvenile;

   4) Of the juvenile's attorney concerning the competence of the juvenile to understand the nature of juvenile proceedings and the legal consequences of the proceedings;

   5) Of the juvenile's attorney as to whether there is any conflict between the attorney and the juvenile; and

   6) Of the juvenile's attorney as to whether the juvenile understands the attorney, if the attorney is not bilingual.

b) If the parents of the juvenile are indigent, the court should have the responsibility of appointing effective counsel; the court should undertake the responsibility of appointing counsel who is bilingual and able to converse with the juvenile and/or parents in Spanish.

c) The court should have the responsibility of requiring counsel appointed to juvenile cases to attend training programs in order to increase their awareness of the problems of minorities and their cultural differences.

d) Representation by counsel should be mandatory and may not be waived.

5. Discretionary Transfer

a) There should be no legislative or executive authority to transfer juveniles from the juvenile justice system to the criminal justice system.

b) There should be a presumption in favor of juvenile court jurisdiction; unless probable cause exists to believe that the juvenile has committed the offense (it may be wise to limit waiver of jurisdiction to offenses involving offenses against the person) and that by clear and convincing evidence the juvenile is not the proper person to be handled by the juvenile court.

c) Definite and strict standards should be developed in order to guide the juvenile court in determining whether the juvenile is not a proper person to be handled by the juvenile court. Such as:

1) Seriousness of offense;

2) Prior record of adjudicated delinquency involving the infliction or threat of significant bodily injury;

3) The disposition available to the juvenile court, and prior services offered to the juvenile in the past; and

4) Appropriateness of the services and dispositional alternatives available in the criminal justice system for dealing with the juvenile.

APPENDIX

GUIDELINES FOR LAW-ENFORCEMENT AGENCIES HANDLING OF ALL JUVENILE OFFENDERS UNDER TITLE III, FAMILY CODE

(EFFECTIVE MARCH 16, 1979)

I. The Family Code separates children between the ages of 10 years or older and under 17 years of age, or 17 years of age or older and under 18 years of age who are alleged to have engaged in delinquent conduct or conduct indicating a need for supervision before becoming 17 years of age, into two categories, according to conduct:

A. DELINQUENT CONDUCT

1. Delinquent conduct is conduct, other than traffic offense, that violates a penal law of this state punishable by imprisonment or by confinement in jail (all Felonies, all Class A and Class B Misdemeanors); or a violation of a reasonable and lawful order of a juvenile court (probation). Sec. 51.03 (a)(1) and (2).

B. CONDUCT INDICATING A NEED FOR SUPERVISION

1. Conduct indicating a need for supervision is conduct, other than a traffic offense, that on three or more occasions violates either:

(i) Penal laws of this state of the grade of misdemeanor that are punishable by fine only (Class C Misdemeanors); or

(ii) Penal ordinances of political subdivisions (municipal ordinances);

2. Truancy (as defined by the Code).
3. Runaway (as defined by the Code).
4. Driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug (first or subsequent offense). Sec. 51.03 (b) (1) through (4).

II. TAKING INTO CUSTODY

A. A child may be taken into custody:

1. Pursuant to an order of the juvenile court.
2. Pursuant to the laws of arrest (a peace officer may arrest without a warrant if a felony is committed in his presence or an offense against the public peace or when a credible person offers proof to peace officer that a felony has been committed and offender is about to escape, and there is no time to obtain warrant, then arrest may be made without warrant).
3. By a law-enforcement officer if there are reasonable grounds to believe that the child has engaged in delinquent conduct or conduct indicating a need for supervision. (This provision dispenses with the requirement of obtaining a warrant of arrest from the juvenile court. The key provision in this section is "reasonable grounds.") Sec. 52.01 (a)(1) through (3).

B. The taking of a child into custody is not an arrest except for the purpose of:

1. Determining the validity of taking the child into custody, or
2. Determining the validity of a search under the laws and constitution of this state or the United States.

C. An officer upon taking a child into custody must warn the child of his constitutional rights (See: subsection E below) or IF an oral statement is to be taken which if found to be true, which conduct tends to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed.

D. If a WRITTEN STATEMENT is to be obtained while the child is in a detention facility, other place of confinement or in the custody of an officer, the child must receive a warning of his constitutional rights from a magistrate.

1. A magistrate is defined as being Judges of District Courts, County Judges, Judges of County Courts at Law, Justices of the Peace and Judges of the City Courts.

E. The warning given to children MUST include the following:

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. YOU DO NOT HAVE TO MAKE ANY STATEMENT, ORAL OR WRITTEN, TO ANYONE.
3. ANY STATEMENT YOU MAKE WILL BE USED IN EVIDENCE AGAINST YOU.
4. YOU HAVE THE RIGHT TO HAVE A LAWYER PRESENT, TO ADVISE YOU BEFORE AND DURING ANY QUESTIONING.

5. IF YOU ARE UNABLE TO EMPLOY A LAWYER, YOU HAVE THE RIGHT TO HAVE A LAWYER ADVISE YOU BEFORE AND DURING ANY QUESTIONING, WHICH LAWYER WILL BE APPOINTED BY THE COURT FOR YOU FREE OF CHARGE, NOW, OR AT ANY OTHER TIME.

6. YOU HAVE THE RIGHT TO TERMINATE THE QUESTIONING AT TIME YOU WANT.

7. IF YOU ARE 15 YEARS OF AGE OR OLDER AND YOU HAVE COMMITTED A FELONY, THE JUVENILE COURT MAY GIVE UP ITS JURISDICTION OVER YOU AND YOU MAY BE TRIED AS AN ADULT IN A CRIMINAL DISTRICT COURT.

8. ALL OF THE RIGHTS THAT HAVE BEEN EXPLAINED TO YOU ARE CONTINUING RIGHTS WHICH CAN BE USED BY YOU AT ANY TIME.

III. ISSUANCE OF WARNING NOTICE

A. A law enforcement officer authorized to take a child into custody may issue a warning notice to the child in lieu of taking him into custody ONLY in the following cases:

1. All truancy violations.
2. Municipal ordinance violations.
3. Class C Misdemeanors, on first and second offense.
4. Liquor violations.

B. Requisites of Warning Notice:

1. The warning notice must identify the child and describe his alleged conduct.
2. A juvenile and police complaint report must be made.
3. The warning notice must be given to the child and a copy of the warning notice must be given to the child's parent, guardian or custodian, as soon as practicable after disposition.

4. A copy of the warning notice must be sent to the school which the child attends if the warning notice is issued for violation of the school attendance law.

5. A copy of the warning notice must be filed with the Youth Services Division of the El Paso Police Department and the Juvenile Probation Department with a complete copy of the police complaint report.

IV. CUSTODIAL DISPOSITION

A. A law enforcement officer authorized to take a child into custody may dispose of the case of a child taken into custody by referring said child to the agencies enumerated herein and ONLY in the cases enumerated.

1. All LOCAL RUNAWAYS (a local runaway is a juvenile who is a resident of El Paso County, Texas) shall be referred to the Protective Services Division of the State Department of Human Resources. In cases of emergency, Holidays, Saturdays and Sundays, the emergency telephone number should be used. The phone number to use is 533-6747.

2. All out of county and out of state runaways (an out of county and out of state runaway is a juvenile that is not a resident of El Paso County, Texas) shall be referred to the Runaway Center, located at 2212 N. Stevens, Telephone number is 562-4141.

3. All truancy cases shall be referred to the proper school authorities responsible for the education of said child or to the Youth Assistance Program of El Paso or the Decentralized Intake and Diversion Unit for status offenders of the Juvenile Probation Department.

4. All first and second offenders of Class C Misdemeanors shall be referred to the Youth Assistance Program of El Paso or the Decentralized Intake and Diversion Unit for status offenders of the Juvenile Probation Department, if in the officer's judgment the best interest of the child would be served by such a re-

ferral and a warning disposition in the discretion of the officer would be inappropriate.

5. All misdemeanor drug offenders shall be referred to the Youth Assistance Program of El Paso, if in the officer's judgment the best interest of the child would be served by such a referral and a warning disposition in the discretion of the officer would be inappropriate.

6. Nothing contained in this Section shall prevent a law enforcement officer when making a custodial disposition in those cases enumerated above from having a brief conference with the child and his parents, if it appears to the officer that the best interest of the child and the public may be served by such a conference, in lieu of an agency referral.

7. All third offenders of Class C Misdemeanors SHALL be referred to the Decentralized Intake and Diversion Unit for status offenders of the Juvenile Probation Department.

B. In all of the cases enumerated above, the officer must make a juvenile and police complaint report identifying the child, describing his alleged conduct, and indicating the action taken.

V. REFERRAL TO THE JUVENILE PROBATION DEPARTMENT

A. A law enforcement officer authorized to take a child into custody SHALL refer the child to the Juvenile Probation Department if:

1. The offense is a felony.
2. The offense is a Class A Misdemeanor.
3. The offense is a Class B Misdemeanor.

B. Requisites of referral to the Juvenile Probation Department

1. A complete copy of the juvenile and police complaint report must accompany every child taken to the Juvenile Probation Department.

2. Any officer taking a child to the Juvenile Probation Department must notify the child's parent, guardian, or custodian of the child's whereabouts, and if unable to locate such a person, shall note on the juvenile and police report that parents have not been notified.

C. In any case where a law enforcement officer takes a child into custody and the officer believes that the child is suffering from a serious physical condition or illness that requires prompt treatment, or if the child is under the influence of intoxicants or alcohol or drugs to such a degree that the child has lost control of his senses and may present a danger to himself or others, the officer SHALL take the child to R. E. Thomason General Hospital for immediate medical attention.

VI. FINGERPRINTS:

A. No child may be fingerprinted without the consent of the juvenile court, except:

1. If a child is 15 years of age or older and he is referred to juvenile court for a felony, his fingerprints may be taken and filed by a law enforcement officer investigating the case; or

2. If latent fingerprints are found during an investigation, and a law enforcement officer has reasonable cause to believe that they are those of a particular child, the child may be fingerprinted regardless of age or offense for purposes of comparison. If comparison is negative, fingerprint card and copies shall be destroyed. If comparison is positive, and child is referred to the juvenile court, fingerprint card and other copies shall be delivered to the court. If comparison is positive, and child is not referred to court, fingerprint card and copies shall be destroyed immediately.

VII. PHOTOGRAPHS:

A. No child taken into custody may be photographed without the consent of the juvenile court unless the child is transferred to criminal court for prosecution.

VIII. JUVENILE ILLEGAL ALIENS:

A. Paragraphs VI and VII above SHALL not be applicable to juvenile illegal aliens taken into custody. Refer to Court Order dated September 1, 1975 for Rules and Regulations applicable to the juvenile illegal alien.

(s) E. H. Peña
JUDGE

Summary
by:

Orlando Rodriguez, Ph.D.

Final Policy Recommendations

Workshop Participants

JUVENILE JUSTICE WORKSHOP - SUMMARY

The juvenile justice workshop of the National Hispanic Conference on Law Enforcement and Criminal Justice met to consider presentations on specific aspects of juvenile justice affecting Hispanics and to develop a set of recommendations to policymakers in this area.

The workshop heard Frances M. Herrera of the Hispana Juvenile Justice Project, COSSMHO, Miguel Duran, Chief, Youth Services Division, Department of Community Development, Los Angeles, California, and the Honorable Enrique Peña, 327th Judicial Court, El Paso, Texas. Ms. Herrera spoke on the existing neglect by juvenile justice agencies of female Hispanic adolescents, underscored the unequal treatment Hispanic females receive in schools, in employment and in the delivery of health services such as sex and pregnancy counseling. Recommendations arising out of her presentation were incorporated into the final set of recommendations; for example, that funds be targeted for special minority youth populations and for communities most in need, and that LEAA fund research on all Hispanic juvenile subpopulations.

Miguel Duran's presentation was a broad discussion of the treatment of Hispanic juvenile by juvenile justice agencies. Based on more than 20 years of youth work in L.A.'s communities, Mr. Duran observed that by and large Hispanic juveniles are not treated fairly by police in street contacts, and that as a result Hispanic adults cannot in all fairness counsel their youth to regard the policeman, the courts, and other agencies as friends. He also pointed out that most juvenile justice agencies operate after the fact, once a law has been broken, but that very little is expended on prevention

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of juvenile and gang delinquency. His recommendations call for greater emphasis on delinquency prevention in present programs and for the creation of special training for workers in juvenile justice so that they be more sensitive to the problems of Hispanic juveniles.

Judge Enrique Peña's presentation focused on the problems of disadvantaged youth in the system. He stated that the term Hispanic is a label difficult to deal with because it encompasses such a broad range of backgrounds. His preference is for the term economically disadvantaged because it is more reflective of the reality of differential treatment of juveniles in the system.

In his presentation he quoted recent OJJDP data to the effect that minority juveniles receive differential and negative treatment with respect to all aspects of case processing, for example, they are more likely to be referred to court than non-minority youth with equal numbers and seriousness of offenses. He pointed out that his experience in court substantiates these assertions. His recommendations call for a set of guidelines for treatment of juveniles in all aspects of juvenile justice processing; for example, that race and nationality distinctions do not enter into police decisions whether to refer juveniles to court.

In the final meeting of the workshop a comprehensive set of recommendations was developed. Several broad concerns were brought out during discussions. One was that in order to guarantee equal and fair treatment for Hispanic juveniles, there is a need to affirm the guiding principles of juvenile justice: individual treatment, separation of juveniles from adults in all aspects of the system, emphasis on the serious offender, and prevention. A second concern was to ensure that affirmative action plans be effectively enforced, for example, by making funds to States be contingent on implementation of affirmative action plans. A third concern was the lack of existing knowledge about how Hispanics fare in the juvenile justice system; and the need for comprehensive research on all aspects of the system. Finally, a need was felt for following up on the results of this conference.

JUVENILE JUSTICE WORKSHOP - RECOMMENDATIONS

POLICY

1) That in the area of juvenile justice, a Hispanic initiative be undertaken immediately to guarantee that 15 percent of funds be directed to programs for Hispanic communities.

2) The targeting of funds on special minority youth populations at risk, specially Hispanic females, and on communities most in need.

3) The elimination of detention of children in adult jail facilities; that the time given to States to accomplish OJJDP's plan in this regard be shortened to two years.

4) That the number of juveniles in detention centers be significantly reduced, and that the time of pre-adjudication detention be kept to the minimum possible.

5) That considerations of race, national origin do not enter into police discretion whether or not to refer juveniles to court.

6) That programs be developed to reduce the incidence of unnecessary detention in urban areas.

7) That juvenile courts be encouraged to appoint effective and competent counsel who are culturally sensitive to Hispanics.

8) Affirm the philosophy of juvenile court that it is geared to individualized treatment and rehabilitation, therefore we oppose present practice of some States to treat juveniles charged with specific offenses as adults.

9) That juvenile courts be encouraged to utilize Hispanic community resources in the disposition of Hispanic cases. Therefore we oppose out-of-State transfers for further care for Hispanic juveniles.

PROGRAMS

10) That there be increased funding for juvenile justice programs for Hispanics

11) That a greater proportion of program funds be set aside for programs for:

a) hard core juvenile,

b) for prevention of juvenile delinquency, and

c) to reduce the number of Hispanics certified to adult courts

12) Improved distribution of funds should be achieved by including criteria which would target resources on communities and neighborhoods that have disproportionately high levels of juvenile crime and delinquency, school drop-outs and suspensions. For this purpose, we urge a significant set-aside of formula grant and special emphasis funds. In the allocation of these set asides, priority should be given to community-based programs and services concerned with the needs and interests of minority and disadvantaged youth and having the demonstrated capacity to provide services in appropriate language and cultural contexts.

13) Department of Labor programs for Hispanics should:

a) contain specific exemptions on income, age, and other criteria;

b) have incentive awards for prime sponsors to provide program slots for high risk individuals;

c) should include a new career concept and utilize private sector resources in order to provide better opportunities for juveniles

14) That federal agencies (OJJDP, NIMH, etc.) fund a national program to train Hispanics to work in the juvenile system at professional and para-professional levels, providing scholarships and promoting the development of curricula relevant to Hispanic culture

15) That professional schools in States with significant Hispanic populations be funded to develop culturally relevant training programs for judges, probation officers and other personnel in the juvenile justice system, and that these curricula be developed by teams of Hispanics in the juvenile justice field

AFFIRMATIVE ACTION

16) LEAA agencies should implement affirmative action plans:

a) to recruit Hispanics in proportion to their concentration in States and other geographical areas and in reflection of their diversity in nationality

b) to fund community-based Hispanic programs in the area of juvenile delinquency

c) to require States receiving block monies to implement affirmative action plans

d) to hold back a significant percentage of funds until such time as State and local agencies receiving monies comply with the plan

17) OJJDP should increase its Hispanic office staff and Hispanic involvement in review panels and affirmative action monitoring

18) Hispanic community organizations should be made aware of policies and guidelines, and be supplied technical assistance in answering RFP's

19) Youth should be included in OJJDP's Advisory Board

RESEARCH

20) Research and state of the art reports on the needs and status of Hispanic youth in the juvenile justice system are needed

a) This research should be on all Hispanic juvenile subpopulations, that is, on males and females, on youth at different stages in the juvenile justice systems, and on the various Hispanic nationalities

b) This research should be conducted with a variety of methodologies, as appropriate to the specific problem at hand

c) This research should be conducted by minority researchers and research organizations

FOLLOW-UP TO THIS CONFERENCE

21) A task force should be set up to follow-up on the recommendations of this conference;

    a) this task force should be reflective of the geographic and nationality diversity of Hispanics

22) A roster of participants in the juvenile justice workshop should be submitted to OJJDP for future contacts

23) All participants and all Hispanic organizations should receive a final report on this conference

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* * * * *

"THE ALIEN MATERIAL WITNESS AND THE LAW"

Presented by:

Linda Reyna Yanez, Esquire
Immigration Defense Project-Director
Texas Rural Legal Aid, Inc.
Brownsville, Texas

"THE TRANSITION FROM UNDOCUMENTED TO DOCUMENTED BY WAY OF THE JUDICIARY"

Presented by:

Albert Armendariz, Sr.
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"IMMIGRATION LAW"

Presented by:

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THE ALIEN MATERIAL WITNESS AND THE LAW

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on
Law Enforcement and Criminal Justice

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I. INTRODUCTION

Anyone who has even minimal trust in the American system of justice believes that a basic precept of due process affords some protections to the accused, but concomitantly allows a limited infringement on their right to liberty. But in accepting this precept, we are ever so careful, to ensure that in affording "due process" the loss of freedom is only to the extent absolutely necessary.

And yet our system allows infringement on the freedom of some individuals which would not be tolerated against the accused: Those individuals are witnesses to crimes. To be a citizen and to be a material witness to a crime could result in incarceration, but to be an alien and a material witness will undoubtedly result in incarceration. As is so sadly true of the alien and the law, the alien is not only subject to the pitfalls of the criminal justice system, but then he must contend with its repercussions in an administrative expulsion proceedings.

This article seeks to discuss the dilemma in which the alien material witness finds himself. Further, it will explore the reasonableness of the length of time of detention as well as the myriad of problems which result in the subsequent expulsion proceedings.

II. FACTUAL BACKGROUND

I have delved into my files to find the most typical fact

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situations to illustrate how a system has developed which ignores fundamental rights and basic notions of due process.

Take the plight of the family from El Salvador, consisting of a father, mother and three children. The family was arrested by agents of the Immigration and Naturalization Service, (hereinafter, "INS"), near the Mexico-Texas border, as they rode in a vehicle on their way to Houston, Texas. As is the pattern and practice of the INS in effecting the arrest of a family, the family was questioned without any advisement of rights and taken to the county jail where they were "booked" as illegal aliens. The driver of the vehicle was charged with transporting, and each alien was listed as a separate count in the ensuing indictment.

It is at this point that the dilemma begins to unfold. The family is temporarily transferred from the official custody of the INS to that of the federal marshal. The logical question which arises is, what authority does the federal marshal have to exercise any jurisdiction over these individuals? The authority to detain is predicated upon 18 U.S.C. §§ 3149[1] and 3146.

Although § 3149 does not expressly authorize the courts to order the arrest of the material witness, the court in Bacon v. U.S., 449 F.2d 933(1971) concluded the following:

> On balance, a grant of power to arrest material witnesses can fairly be inferred from Rule 46(b) and from § 3149 as well. Like § 3149, Rule 46(b) provides for the imposition of bail on a material witness, and, in language even more forceful than § 3149, Rule 46(b) further states that the witness' failure to post bail may result in his being committed to the custody of the marshal pending final disposition of the proceeding in which the witness' testimony is

> needed. Although Rule 46(b) does not mention arrest, the Rule applies only to those witnesses whose presence cannot practicably be secured by subpoena. It would make little sense to give the court the power to impose bail, but deny it the power to issue warrant for the purpose of bringing the witness before the court in the first instance. Congress cannot be presumed to have granted a power to the courts and yet withheld the only effective means of implementing it. See Gemsco, Inc. v. Walling, 324 U.S. 244, 255(1945); United States v. Jones, 204 F.2d 745, 754(1953). See also, United States v. Geingold, 416 F.Supp. 627 (E.D.N.Y. 1976).

In practice, the statute is applied differently in different parts of the country, the Southwest having the harshest application. Returning to the family from El Salvador, the next step in the process was the separation of the family: The children were detained with the mother and the father was placed with convicts in the county jail. The father had no idea where his family had been taken and although he had made statements to both INS and the federal authorities he was not sure why he was being detained. The U.S. Attorney's office consistently argues that it is absolutely necessary to detain all alien material witnesses because not to do so will violate the defendant's Sixth Amendment rights to cross-examination and compulsory process. Yet in this case, a determination was made to release to the INS, for deportation in accordance with an INS detainer, the mother and children without informing the father. What followed, put the father in the midst of a "Catch 22" dilemma. He, unlike his family, was taken before a federal magistrate and pled guilty, without the assistance of counsel, to illegal entry under , U.S.C. **S** 1325. He was sentenced to 90 days, suspended and placed on probation for five years. Now, it would appear that he should have been released at this point, that was not the case. He was then returned to jail: Held as a material witness with a criminal record, will make him either excludable, deportable, or both. Unbeknownst to him, his family was in El Salvador, having been railroaded thru "voluntary" expulsion proceedings.

The second case involves a 20 year-old Mexican male whose father is a United States citizen and whose brothers are lawful, permanent residents of the United States. This young man was arrested in a similar manner to that of the family from El Salvador, but with one significant difference: This young man was the beneficiary of an immediate relative's visa petition, which had been filed by his father pursuant to 8 U.S.C. S 1151. The significance of this fact is that pursuant to INS regulations and policy he was not deportable. Consequently INS did not issue any type of charge against him but did transfer him to the custody of the federal marshal charged as a material witness. However, no one from the U.S. Attorney's Office ever spoke to him and in fact a determination was made by the federal magistrate that he be held in custody in lieu of a $2,000.00 bond because he was an "illegal alien" and, therefore, a poor bail risk, likely to abscond to avoid deportation. An obviously erroneous conclusion of law by the magistrate. (This conclusion is made in every "alien" case.) We are now faced with a situation in which the basis of the determination to detain is the immigration status of an individual at a time when that status has not been determined. Recall that at this point the INS has not made a determination of deportability, that determination is being held in abatement pending the federal criminal procedures in the principal case. Yet the INS will gleefully avail itself of the conviction, obtained during the material witness hold, which will in turn serve as the basis for a finding of deportability, when the INS regains custody of the witness. As the facts developed, the young man had been sitting in jail for six weeks with no charges pending, solely on a material witness hold based on erroneous information. At no time during or after his arrest was he advised of his rights under the Immigration and Nationality Act[2] or Miranda v. Arizona, 384 U.S. 436(1966).

The INS, after having been informed by counsel of INS' Operations Instructions and relevant regulations, informed the U.S. Attorney's Office that this young man was not deportable. At the same time, the defendant in the related criminal case pled guilty, and therefore the material witnesses were no longer needed. The young man was once again transferred to the custody of the INS, without notification of Counsel, even though there was a Notice of Appearance of Counsel on file. Upon taking the young man into custody, he was placed in an INS van along with other "witnesses", and taken to the border. As they were filing out of the van they were made to sign a document, which was not explained to them and which in fact reflected that they all wished to "voluntarily" return to Mexico, thereby waiving all rights to counsel, to remain silent, and to have a formal deportation hearing. This particular young man informed the border patrolman that he wished to make a phone call, but he was told that there was no time, that he had to sign this paper and proceed to Mexico.

My last presentation relates to two separate cases in which the detainees, upon being taken before the federal magistrate for arraignments, were "advised" by the court interpreter that although they had the right to a lawyer it was better for them to admit to everything the judge asked them. Furthermore he told them that to obtain counsel would only complicate matters, and that they would not be sentenced to serve any time if they cooperated but would only be held to testify and in addition they would even be paid for their testimony. Of course these detainees pled guilty to illegal entry, were sentenced to 90 days suspended, five years probation and were returned to jail on material witness charges, with INS detainers for deportation hearings to be set at a later date. At no time before, during, or after their arrest were they advised by either INS agents nor federal agents of any rights under the Immigration and Nationality Act nor *Miranda*.

III. LEGAL ISSUES

The critical legal problems which arise for the alien material witness can be summarized as follows:

1. A determination is not made on an individual basis pursuant to the Bail Reform Act regarding whether or not detention is necessary. The determination that the subject is a poor bail risk is arbitrarily and summarily made on the sole basis of a person's alienage;
2. Any advisement as to the right to counsel is given in such a psychologically coersive and misleading fashion that the unsophisticated is virtually denied any meaningful choice in the matter;
3. Detention periods run from 1 month to 1 year in spite of requirements in the Federal Rules of Criminal Procedure, Rule 46(g), that a bi-weekly reporting be made stating

reasons as to why such a witness should not be released;

4. The Material Witness statute requires that depositions be taken to avoid unreasonable detention, but generally the U.S. Attorney's Office prefers live witnesses to depositions;
5. It is a very difficult decision to assert any rights pursuant to any of the cited provisions of law in a situation in where the witness has no charges filed against him, and where he knows that to assert rights is to ensure that criminal charges will be filed to keep him in detention; and, finally;
6. Aliens who have been determined to be deportable are exempt from receiving the material witness fee.

IV. RECOMMENDATIONS

The legal strategy to be applied in a particular case will necessarily depend on the individual fact situation. However, some general observations can be made to assist in the evaluation of a case.

Alien material witnesses will generally belong to one of the following classes:

1) An individual being held solely on a material witness charge with no criminal or INS charges pending;
2) An individual being held as a material witness on a suspended sentence and subject to an INS detainer;
3) A material witness sentenced to serve and also subject to an INS detainer.

Subsequent to an inquiry on the particular status of the witness, the next step is to inquire as to the status of the principal case. At this time the Alien's attorney should explore the potential of entering into a stipulation between Defendant's counsel and the U.S. Attorney regarding the witness' testimony. Absent a stipulation, counsel may wish to proceed by filing a Motion to Depose and Release pursuant to 18 U.S.C. § 3149 and Federal Rules of Criminal Procedure, Rule 46(a).

In a case in which the witness has been held for a clearly unreasonable length of time and, a decision has been made to represent him in any subsequent expulsion proceedings, the only remedy may be the filing of a Petition for Writ of Habeas Corpus.

The political strategy which is needed to remedy the wrong in these cases is much more important than any possible legal strategies. What that strategy should be, will be the subject of our discussions at this conference. The political atmosphere in which we are working at the present time is not likely to be receptive to any positive reform. We have a long, hard road ahead of us: The law is complex, and the societal obstacles in the maze appear to be almost insurmountable. U.S. Supreme Court Justice, Oliver Wendell Holmes once said that lawyers are the least creative of all men; I say that as lawyers and members of a minority community, which is being denied the most fundamental of rights--a denial of liberty--we cannot afford not to be creative.

Submitted by
Linda Reyna Yanez, Esq.

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the state has two primary interests: (1) assurance of defendant's future presence in court proceedings and (2) the protection of the public. Neither of these interests, the *Means* Court held, are sufficiently compelling to justify a restriction of First Amendment liberties, and the petitioner Means was released.

¶ 46.11. Bail for Material Witness.

Section 3(a) of the Bail Reform Act of 1966 (now codified at 18 USC § 3149) presently determines the material witness procedures followed in the federal courts.[1] Rule 46(a), as amended in 1972, explicitly recognizes that the statute is controlling as to the criteria for determining eligibility for release of material witnesses.[2] The statute contains a two-pronged test for determining whether a witness falls within its embrace. First, it must appear by affidavit that the testimony of a person is material to a criminal proceeding. Second, it must be shown that "it may become impracticable" to secure the person's presence by subpoena.[3] Upon such a showing, the same provi-

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[1] The text of the statute is as follows:

"3149. **Release of material witnesses.**—If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, a judicial officer shall impose conditions of release pursuant to section 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure [Rules, part 2] (June 22, 1966, P. L. 89-465, § 3(a), 80 Stat 216.).

Section 3149 superseded the former Fed. R. Crim. P. 46(b) which, in turn, had taken the place of 28 USC § 657 (now repealed).

For the legislative history of the material witness provision of the Bail Reform Act of 1966, see H R Rep No. 1541, 89th Cong., 2d Sess, 2 US Code Cong & Adm News (1966) 2293, 2305.

See generally Carlson, *Jailing the Innocent: The Plight of the Material Witness* (1969) 55 Iowa L Rev 1; Comment, *Pretrial Detention of Witnesses* (1969) 117 U Pa L Rev 700.

[2] See ¶ 46.01[4], *supra.*

The procedure governing release during trial, justification, forfeiture, exoneration, and supervision of the detention of defendants and witnesses, remain those set forth in Rule 46.

[3] *Supra*, N 1.

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sions of 18 USC § 3146 regarding conditions of release for persons awaiting trial become applicable.[4] Section 3149 also provides for deposition of the material witness as an alternative to continue detention.[5]

Curiously, neither *§ 3149* nor Rule 46 expressly grants the courts the power to order the arrest of a material witness. However, *§ 3149* does empower a judicial officer to "impose conditions of release pursuant to section 3146," [6] while the rule, in its current form, directs the court to "exercise supervision over the detention of defendant and witnesses within the district pending trial for the purpose of eliminating all unnecessary detention." [7] In light of those provisions and their historical background, the Ninth Circuit, in *Bacon v. United States*,[8] had little difficulty in inferring a grant of power to the federal courts to order the arrest of material witnesses:

> "It would make little sense to give the court the power to impose bail, but deny it the power to issue a warrant for the purpose of bringing the witness before the court in the first instance. Congress cannot be presumed to have granted a power to the courts and yet withheld the only effective means of implementing it." [Citations omitted.][9]

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[4] *Id.*

[5] *Id.*

The taking of depositions in federal criminal proceedings is governed by Fed. R. Crim. P. 15. Subsection (a) of that rule includes the following provision regarding material witnesses:

> "If a witness is committed for failure to give bail to appear to testify at a trial of hearing, the court on written motion *of the witness* and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness." [Emphasis supplied.]

The advisory committee notes accompanying Rule 15 state that the purpose of this provision is "to afford a method of relief for [a witness committee for failure to give bail], if the court finds it proper to extend it." Note that a party may also move the court to order that a deposition be taken of his own "prospective witness." Fed. R. Crim. P. 15(a). See generally ¶ 15.01 *et seq.*, *supra.*

[6] *Supra* N 1.

[7] Fed. R. Crim. P. 46(g).

[8] (CA9th 1971) 449 F.2d 933.

[9] Bacon, *supra* N 8, 449 F 2d at 937. See also United States v. Feingold (ED NY 1976) 416 F Supp 627, 628.

Accord United States v. Verduzco-Macias (CA9th 1972) 463 F2d 105, 107 n 1.

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A further problem is the absence in Rule 46 and *§ 3149* of any requirement that a judicial officer find probable cause for issuance of an arrest warrant directed against a material witness. However, the Ninth Circuit in *Bacon* held that this omission "does not provide a basis sufficient to insulate the procedure by which a material witness is taken into custody from the command of the Fourth Amendment." [10] In identifying the specific criteria for probable cause, the *Bacon* court relied on the language of Rule 46 and *§ 3149:*

> "Before a material witness arrest warrant may issue, the judicial officer must have probable cause to believe (1) 'that the testimony of a person is material' and (2) 'that it may become impracticable to secure his presence by subpoena.' These requirements are reasonable, and if they are met, an arrest warrant may issue." [11]

The actual showing necessary to withstand the criterion of materiality will, of course, necessarily vary with the facts of a particular case.[12] It has been held that the second criterion (as to the impracticability of securing attendance of the witness by subpoena) is not satisfied by a mere assertion to that effect.[13] However, it has been held sufficient to show repeated unsuccessful attempts to serve a subpoena on the witness.[14]

18 USC § 3149 refers to "testimony . . . in any criminal proceeding" [15] while the rule speaks of "detention of . . . witness . . . pending trial." [16] However, in *Bacon v. United States*,[17] the Ninth Circuit, relying on the language "any or all proceedings prior to and including verdict," contained in the enabling act[18] under authority of which the Supreme Court has promulgated the federal criminal rules, held that it would be "incongruous to say that a proceeding

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[10] 449 F2d at 942.

[11] *Id.* at 943.

[12] See discussion in *Bacon*, *supra* N 8, 449 F2d at 943, and in *Feingold*, *supra* N 9, 416 F Supp 628.

[13] Bacon, *supra*, N 8, 449 F2d at 943.

[14] *Feingold*, *supra* N 9, 416 F Supp at 629. The court in *Feingold* explicitly rejected the argument that before a warrant may issue against a material witness, the government must show that the witness had previously disregarded a subpoena. The court rested its rejection of this argument on the "impracticable" criterion advanced in § 3149 as well as on generalized policy grounds. 416 F Supp. at 629.

[15] *Supra*, N 1.

[16] Fed. R. Crim. P. 46(g)

[17] (CA9th 1971) 449 F2d 933, 939-40.

[18] Act of June 29, 1940, c 445, 54 Stat 688, now codified at 18 USC § 3771.

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before the body charged by the Constitution with initiating criminal prosecutions does not amount to a proceeding in a criminal case prior to verdict."[19]

From the standpoint of the defendant, the availability of a material witness procedure to secure favorable testimony may implicate his sixth amendment right to compulsory process as well his rights under the Due Process Clause. In *United States v. Mendez-Rodriguez*,[20] a defendant charged with immigration violations successfully argued to the Ninth Circuit that the government's deportation to Mexico of three of the six illegal aliens apprehended in his vehicle, thereby placing them beyond the reach of the subpoena power of the trial court, was violative of his due process rights. A subsequent case[21] was factually similar except that the government took positive steps in order to insure that the aliens would be available to testify at the time of trial: they were "farmed out" and half their pay withheld pending their appearances at trial. Nonetheless, six of the eleven aliens so placed absconded before defense counsel could invoke the material witness procedure of 18 USC § 3149. The Ninth Circuit distinguished this from the earlier case on the ground that the government "did not physically move [the putative witnesses] from the jurisdiction of the court and did not actively facilitate their leaving" and upheld the defendant's convictions.[22] In *Singleton v. Lefkowitz*,[23] the Second Circuit granted habeas relief to a state prisoner who argued that he was deprived of his sixth amendment right to compulsory process and his fourteenth amendment right to due process by the state trial court's refusal to grant him a short adjournment, requested to secure the testimony of a vital witness who was unavailable because the police had improperly released him from custody after his arrest pursuant to a material witness order. The Second Circuit's opinion held that a defendant claiming a denial of

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[19] Cf. United States v. Thompson (CA2d 1963) 319 F2d 665 (Grand jury investigation not a criminal proceeding within the meaning of the provision of the Walsh Act, 28 USC § 1783, *et seq.*, giving the district courts the power to issue subpoenas to witnesses outside the United States).

[20] (CA9th 1971) 450 F2d 1.

[21] United States v. Verduzco-Macias (CA9th 1972) 463 F. 2d 105, *cert. denied* 409 US 883, 93 S Ct 173, 34 L Ed 2d 139.

[22] *Id.*, 463 F2d at 107.

[23] (CA2d 1978) 583 F2d 618. For the earlier state proceedings in this case, see People v. Singleton (2d Dep't 1975) 50 AD 2d 939, 377 NYS 2d 197, *aff'd* (1977) 41 NY2d 402, 393 NYS 2d 353, 361 NE 2d 1003.

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his sixth amendment right to compulsory process must ordinarily show that the missing witness would have provided favorable evidence which was neither cumulative nor irrelevant;[24] the required showing is, however, to be relaxed where the government has contributed to the unavailability of the witness.[25]

All witnesses in attendance upon a federal court are entitled to a daily attendance fee, presently set at $30 per day.[26] A person detained as a material witness is now also entitled to compensation under this section "for every day of confinement during the trial or other proceeding for which he has been detained"—regardless of whether he actually appears in the courtroom.[27] Formerly, such detained witnesses were limited to $1 compensation for those days of their incarceration during which no proceedings were conducted in the case in connection with which they were being held.[28] As the result of legislative action in 1978, this harsh situation was mitigated so that material witnesses became entitled to the daily attendance fee, for each day of detention, even when not in attendance on court.[29] A material witness is not by virtue of his detention entitled to the *Miranda*[30] warnings ordinarily afforded persons subjected to custodial interrogation;[31] rather, it is incumbent upon the material witness to

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[24] Singleton, *supra* N 23, 583 F2d at 623, *citing* United States v. Taylor (CA2d 1977) 562 F2d 1345, 1361-62, *cert. denied* 434 US 853, 98 S Ct 170, 54 L Ed 2d 124.

[25] *Singleton*, supra N 23, 583 F2d at 623.

[26] 28 USC § 1821(b).

[27] Hurtado v. United States (1973) 410 US 578, 586, 93 S Ct 1157, 1162, 35 L Ed 2d 508.

[28] *Hurtado*, supra N 27. The *Hurtado* court rejected the detainees' argument that incarceration at such a outmoded rate of compensation (dating back to the Act of Feb. 26, 1853, c 80, § 3, 10 Stat 167) was unconstitutional. The majority stated that the fifth amendment did not require the government "to pay for the performance of a duty it is already owed." (410 US at 588, 93 S Ct at 1164, 35 L Ed 2d 508) and categorized "[t]he financial losses suffered during pretrial detention [as] an extension of the burdens borne by every witness who testifies" (*Id.*). The *Hurtado* court summarily rejected the detainees' thirteenth amendment argument. (410 US at 589, n. 11, 93 S Ct 1164, n 11, 35 L Ed 2d 508).

[29] See 18 USC § 1821(c)(4).

[30] Miranda v. Arizona (1964) 384 US 436, 86 S Ct 1602, 16 L Ed 2d 694.

[31] United States v. Glasco (CA5th 1974) 488 F2d 1068; United States v. Anfield (CA9th 1976) 539 F2d 674.

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invoke on his own initiative the fifth amendment privilege against self-incrimination should he desire to remain silent.[32]

In its opinion in *Hurtado v. United States,*[33] the Supreme Court recognized that the "public obligation to provide evidence" may become "financially burdensome".[34] The burden is, of course, especially accute where the prescribed procedures are improperly observed. The wrongfully detained witness may, in some instances, be able to resort to a remedy in tort[35] but (except in those instances where the wrongful detention is at the instigation of the defendant in a criminal proceeding) will probably be confounded by the insuperable barrier of prosecutorial immunity.[36]

[32] *Anfield, supra* N 31, 539 F2d at 677.

[33] *Supra* N 27.

[34] *Hurtado, supra* N 27, 410 US at 589, 93 S Ct at 1164, 35 L Ed 2d 508.

See also Stein v. New York (1953) 346 US 156, 184, 73 S Ct 1077, 1092, 97 L Ed 1522, 1542, ("The duty to disclose knowledge of crime . . . is so vital that one known to be innocent may be detained, in the absence of bail, as a material witness.").

[35] See, e.g. Quince v. Rhode Island (1962) 94 RI 200, 179 A2d 485 where the plaintiff, a migratory farm worker, witnessed a murder and was subsequently confined as a material witness for 158 days without benefit of a hearing. After obtaining habeas relief (Quince v. Langlois [1959] 88 RI 438, 149 A2d 349), the material witness was the beneficiary of a legislative act of grace permitting him to sue the state, and succeeded in recovering actual damages at trial. In modifying the award to include the addition of exemplary damages, the Supreme Court of Rhode Island had this to say about the wronged material witness:

> "To the innocent, even a momentary deprivation of liberty is intolerable; 158 days is an outrage. Confinement of the plaintiff for so long a period among criminals and forcing him to wear prison garb added the grossest insult to injury. Such maltreatment cannot be fully compensated for by pecuniary damages."

[36] See Daniels v. Kieser (CA7th 1978) 586 F2d 64, *reversing* (ND Ill. 1978) 446 F. Supp. 1160. In ordering dismissal of this action, the Seventh Circuit held that a federal prosecutor's action in obtaining a material witness arrest warrant without the affidavit required by 18 USC § 3149 was an activity "intimately associated with the judicial phase of the criminal process" and thus was protected by the absolute immunity afforded prosecutors while "participating in the judicial process," as defined in Imbler v. Pachtman (1976) 424 US 409, 96 S Ct 984, 47 L Ed 2d 218. Daniels v. Kieser, *supra,* 586 F.2d at 68.

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by victims of other offenses: the court's supervisory power cannot be invoked to exclude identification testimony by an eyewitness to a crime. U. S. v. Anderson, D.C.D.C.1972, 352 F.Supp. 33, affirmed 490 F.2d 785, 160 U.S.App.D.C. 217.

If a witness is unable to identify a defendant at lineup, or identifies another person, this information ultimately must be turned over to defendant's counsel and it can be brought out during course of trial. U. S. v. Scarpellino, D.C.Minn. 1969, 296 F.Supp. 269.

4. Presentation of issue to jury

In identification cases, the fairest result is achieved by permitting juries to determine identity by fairly exposing them to pertinent surrounding facts and circumstances. U. S. v. Zeiler, D.C.1969, 296 F.Supp. 224, reversed on other grounds 427 F.2d 1305.

5. Tainted identification

Where witnesses to bank robbery were confronted with police "mug shots" of five individuals and three ordinary snapshots of defendant, witnesses knew that person thought to be bank robber had only recently been apprehended, only defendant was pictured wearing eyeglasses, as had actual perpetrator of robbery, robbery had occurred some three and one-half years before identification and none of witnesses had been able to view robber for more than a few minutes, and there was nothing unusual in his appearance, and counsel was not present at the photographic identification, witnesses were legally incompetent to make in-court identification of defendant. U. S. v. Zieler, C.A.Pa.1970, 427 F.2d 1305.

Where it appeared that defendant, accused of robbing of savings and loan association, had already been identified by name by a personal acquaintance who recognized him running from the association's office at time of robbery, identification evidence by two other witnesses, who were shown photographs by police including photograph of defendant which was 2½ times larger than photograph of any other person in same series of photographs and which was only photograph which was not a mug shot, must be suppressed because of improper photographic identification procedures in case in which there appeared to have been no valid reason for resort to photographic identification. U. S. v. King, D.C.Tex. 1970, 321 F.Supp. 614.

Since this section rendering testimony of eyewitness admissible in criminal prosecution contains no effective alternate safeguards to those stated in United States Supreme Court decision regarding police use of photographs to establish identity of accused, to apply this section indiscriminately would result in irreconcilable conflict with the Constitution as construed by Supreme Court, and district court would not rule that eyewitness testimony was admissible under this section despite improper photographic identification procedures employed by police. Id.

6. State prosecutions

This section and section 3501 of this title apply only to prosecutions in federal court for federal crimes or to applications to federal court for federal writ of habeas corpus and, in absence of determination of the United States Supreme Court that this section and section 3501 of this title affect requirements for admission of confession in state courts, confession made by defendant who was not informed of his right to have counsel, retained or appointed, present during questioning and giving of his statement was inadmissible. People v. Whisenant, 1969, 172 N.W.2d 524, 19 Mich.App. 182, rehearing denied 175 N.W.2d 560, 21 Mich.App. 518, affirmed 187 N.W.2d 229, 384 Mich. 693.

7. Weight and sufficiency of evidence

Testimony of one witness, if solidly believed, is sufficient to prove identity of a perpetrator of crime. U. S. v. Smith, C.A.Cal.1977, 563 F.2d 1361, certiorari denied 98 S.Ct. 747, 434 U.S. 1021, 54 L.Ed.2d 969.

§ 3503. Depositions to preserve testimony

(a) Whenever due to exceptional circumstances it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved, the court at any time after the filing of an indictment or information may upon motion of such party and notice to the parties order that the testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness. A motion by the Government to obtain an order under this section shall contain certification by the Attorney General or his designee that the legal proceeding is against a person who is believed to have participated in an organized criminal activity.

(b) The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination, and shall produce him at the examination and keep him in the presence of the witness during the examination. A defendant not in custody shall have

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the right to be present at the examination, but his failure, absent good cause shown, to appear after notice and tender of expenses shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) If a defendant is without counsel, the court shall advise him of his rights and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel of his own choice. Whenever a deposition is taken at the instance of the Government, or whenever a deposition is taken at the instance of a defendant who appears to be unable to bear the expense of the taking of the deposition, the court may direct that the expenses of travel and subsistence of the defendant and his attorney for attendance at the examination shall be paid by the Government. In such event the marshal shall make payment accordingly.

(d) A deposition shall be taken and filed in the manner provided in civil actions, provided that (1) in no event shall a deposition be taken of a party defendant without his consent, and (2) the scope of examination and cross-examination shall be such as would be allowed in the trial itself. On request or waiver by the defendant the court may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. Such request shall constitute a waiver of any objection to the taking and use of the deposition based upon its being so taken.

(e) The Government shall make available to the defendant for his examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the Government and which the Government would be required to make available to the defendant if the witness were testifying at the trial.

(f) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the witness refuses in the trial or hearing to testify concerning the subject of the deposition or part offered; or that the party offering the deposition has been unable to procure the attendance of the witness by subpena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(g) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

Added Pub.L. 91-452, Title VI, § 601(a), Oct. 15, 1970, 84 Stat. 934.

Legislative History. For legislative history and purpose of Pub.L. 91-452, see 1970 U.S.Code Cong. and Adm.News, p. 4007.

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½. Constitutionality

This section permitting use of absent witnesses' depositions in lieu of trial testimony, which by its terms is limited to exceptional circumstances where, in interest of justice, it is necessary to take and preserve testimony away from trial court, which permits use of testimony as substantive proof only if its appears that witness meets one of several unavailability criteria and which incorporates rules 28 and 30, Federal Rules of Civil Procedure, 28 U.S.C.A., governing criminal depositions, is not facially unconstitutional and depositions taken thereunder satisfy procedural safeguards required by U.S.C.A.Const. Amend. 6. U. S. v. King, C.A.Cal.1976, 552 F.2d 833, certiorari denied 97 S.Ct. 1646, 430 U.S. 966, 52 L.Ed.2d 357.

Even though defendant had been imprisoned continuously since effective date of this section allowing use of depositions of witnesses in criminal proceeding if proceeding is against a person whom Attorney General believes to have participated in organized criminal activity, where burglary victim's deposition was admissible against defendant whom Attorney General believed participated in organized criminal activity because de-

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4. Discretion of court

District court is not authorized to execute letters rogatory whenever requested by foreign country or party there. In re Letters Rogatory Issued by Director of Inspection of Government of India, C.A.N.Y.1967, 385 F.2d 1017.

5. Aliens

Court had power to subpoena nonresident alien present in United States. In re Grand Jury Proceedings, C.A.Fla.1976, 532 F.2d 404, rehearing denied 535 F.2d 880, certiorari denied 97 S.Ct. 354, 429 U.S. 940, 50 L.Ed.2d 309.

Where codefendant was fugitive from justice who had wilfully absented himself to a country with which United States did not have diplomatic relations and thus was afforded protection against sanctions that might be sought for perjurious testimony, there was no showing that codefendant was willing to testify and government could not prepare cross interrogatories without disclosure in advance of defendant's trial of substance of its case, defendant would not be permitted to take deposition by written interrogatories of codefendant. U. S. v. Figueroa, D.C.N.Y.1969, 298 F.Supp. 1215.

11. Service pursuant to order

Even if word "directiv" as used in order providing that grand jury subpoena was to be served directly on the subject, who was an American citizen residing in Milan, Italy, by an appropriate official of the American consul in Rome or through the appropriate Italian officials in accordance with Italian law was ambiguous, it was not necessary to construe it as requiring personal service; rather, service on concierge at subject's residence, as authorized under Italian law, was proper; order required no more than that the subpoena be served in accordance with Italian law and the structures imposed by due process. U. S. v. Danenza, C.A.N.Y.1975, 528 F.2d 390.

Where service of a subpoena on an American citizen residing in a foreign country is affected by a foreign official, but the American consulate general is responsible for providing expense money, tender of such monies by the consul is sufficient, even though service is made by someone else. Id.

12. Contempt

Civil contempt citation for failure to comply with grand jury subpoena was not required to be overturned because the United States consul and not the "person serving the subpoena," as provided in this section governing service of subpoenas on a United States resident who is in a foreign country, tendered the required travel and attendance fees; reason for tender by the consul, rather than by the Italian official making service, was that the United States consulate general was the entity which was to provide the expense money. U. S. v. Danenza, C.A.N.Y.1975, 528 F.2d 390.

§ 1784. Contempt

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7. Evidence

Evidence, including disclosure that physician in Israel advised defendant, because of latter's physical condition, not to travel abroad, failed to sustain conviction for criminal contempt for failure to comply with subpoena which had been served upon defendant in Israel and required him within a few days to appear and testify in the United States. U. S. v. Lansky, C.A.Fla.1974, 496 F.2d 1063, rehearing denied 502 F.2d 1168.

10. Hearing

Where an alleged contemnor, after receiving the Government's moving papers in ample time to prepare for show cause hearing, neglects to take depositions or make a prior demand for an evidentiary hearing and presents nothing to excuse his absence or to create a material issue of fact, there is no constitutional requirement that an evidentiary hearing be held. U. S. v. Danenza, C.A.N.Y.1975, 528 F.2d 390.

CHAPTER 119.—EVIDENCE; WITNESSES

Sec.
1821. Per diem and mileage generally; subsistence.
1822. Competency of interested persons; share of penalties payable.
1824. Mileage fees under summons as both witness and juror.
1825. Payment of fees.
1826. Recalcitrant witnesses.
1827. Interpreters in courts of the United States.
1828. Special interpretation services.

1978 Amendment. Pub.L. 95–539, § 2(b), Oct. 28, 1978, 92 Stat. 2042, added items 1827 and 1828.

1970 Amendments. Pub.L. 91–563, § 5(b), Dec. 19, 1970, 84 Stat. 1478, struck out item 1823.

Pub.L. 91–452, Title III, § 301(b), Oct. 15, 1970, 84 Stat. 932, added item 1826.

§ 1821. Per diem and mileage generally; subsistence

(a)(1) Except as otherwise provided by law, a witness in attendance at any court of the United States, or before a United States Magistrate, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall be paid the fees and allowances provided by this section.

(2) As used in this section, the term "court of the United States" includes, in addition to the courts listed in section 451 of this title, any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

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(b) A witness shall be paid an attendance fee of $30 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance.

(c)(1) A witness who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from such witness's residence by the shortest practical route in going to and returning from the place of attendance. Such a witness shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

(2) A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, pursuant to section 5704 of title 5, for official travel of employees of the Federal Government shall be paid to each witness who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniformed table of distances adopted by the Administrator of General Services.

(3) Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt), shall be paid in full to a witness incurring such expenses.

(4) All normal travel expenses within and outside the judicial district shall be taxable as costs pursuant to section 1920 of this title.

(d)(1) A subsistence allowance shall be paid to a witness (other than a witness who is incarcerated) when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day.

(2) A subsistence allowance for a witness shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, pursuant to section 5702(a) of title 5, for official travel in the area of attendance by employees of the Federal Government.

(3) A subsistence allowance for a witness attending in an area designated by the Administrator of General Services as a high-cost area shall be paid in an amount not to exceed the maximum actual subsistence allowance prescribed by the Administrator, pursuant to section 5702(c)(B) of title 5, for official travel in such area by employees of the Federal Government.

(4) When a witness is detained pursuant to section 3149 of title 18 for want of security for his appearance, he shall be entitled for each day of detention when not in attendance at court, in addition to his subsistence, to the daily attendance fee provided by subsection (b) of this section.

(e) An alien who has been paroled into the United States for prosecution, pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined pursuant to section 242(b) of such Act (8 U.S.C. 1252(b)) to be deportable, shall be ineligible to receive the fees or allowances provided by this section.

As amended Mar. 27, 1968, Pub.L. 90–274, § 102(b), 82 Stat. 62; Oct. 27, 1978, Pub.L. 95–535, § 1, 92 Stat. 2033.

1978 Amendment. Pub.L. 95–535 increased the daily witness attendance fee from $20 to $30, substituted provisions relating to compensation for the actual expenses of travel based on the form of transportation used, to a travel allowance equal to the mileage allowance under section 5704 of Title 5 for a witness traveling by privately owned vehicle, and to tolls, taxi fares, and parking fees for provisions that a witness would receive 10 cents per mile and that mileage computation would be based on a uniform table of distances regardless of the mode of travel employed, provisions relating to a subsistence allowance in amounts not to exceed those which Government employees receive for official travel for provisions that such subsistence allowance would be $16 per day, provisions relating

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Cross References

Jurisdiction of Supreme Court to review state court judgments or decrees, see section 1257 of Title 28, Judiciary and Judicial Procedure.

Library References

Ball 🔑44.	C.J.S. Bail § 33 et seq.

Notes of Decisions

1. Release of defendant

United States Supreme Court could not have admitted to bail, before expiration of his New York sentence, person convicted in New York of unlawful possession of heroin, where offense was not bailable. Sibron v. State of N. Y., N.Y.1968, 88 S.Ct. 1889, 392 U.S. 40, 20 L.Ed.2d 917.

A plaintiff in error, chargeable with an offense bailable by the laws of the state, shall not be released until final judgment or until a bond shall be given. Hudson v. Parker, Ark.1895, 15 S.Ct. 450, 156 U.S. 277, 39 L.Ed. 424.

§ 3145. Parties and witnesses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

On Preliminary Examination, Rule 5(b).
Before conviction; amount; sureties; forfeiture; exoneration, Rule 46.
Pending sentence, Rule 32(a).
Pending appeal or certiorari, Rules 38(b), (c), 39(a), 46(a, 2).[1]
Witness, Rule 46.

June 25, 1948, c. 645, 62 Stat. 821.

[1] Rules 38(b), (c), 39(a), abrogated, Dec. 4, 1967, eff. July 1, 1968. See Federal Rules of Appellate Procedure, 28 U.S.C.A.

§ 3146. Release in noncapital cases prior to trial

(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) place the person in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash

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or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(d) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer in the district may review such conditions.

(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: *Provided*, That, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

imposition of death penalty and case thus lost its capital nature. U. S. v. Weddell, C.A.N.D.1977, 567 F.2d 767, certiorari denied 98 S.Ct. 2267, 436 U.S. 919, 56 L.Ed.2d 761.

14. Challenges to jurors

Granting by district court of request for two attorneys pursuant to this section relating to counsel in capital cases was not inconsistent with denial of request for 30 peremptory jury challenges. U. S. v. Martinez, C.A.Cal.1976, 536 F.2d 886, certiorari denied 97 S.Ct. 273, 429 U.S. 907, 50 L.Ed.2d 189.

§ 3006A. Adequate representation of defendants

(a) **Choice of plan.**—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation (1) who is charged with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation, (2) who is under arrest, when such representation is required by law, (3) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, as provided in subsection (g), or, (4) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel. Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial proportion of cases, either of the following or both:

(1) attorneys furnished by a bar association or a legal aid agency; or

(2) attorneys furnished by a defender organization established in accordance with the provisions of subsection (h).

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

(b) **Appointment of counsel.**—Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan. In every criminal case in which the defendant is charged with a felony or a misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation and appears without counsel, the United States magistrate or the court shall advise the defendant that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant waives representation by counsel, the United States magistrate or the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate or the court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

(c) **Duration and substitution of appointments.**—A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate or the court through appeal, including ancillary matters appropriate to the pro-

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appeals from conviction. U. S. v. Ursini, D.C.Conn.1967, 276 F.Supp. 993.

9. Revocation of bail

Order, after hearing, granting pretrial release in capital case, upon execution of $5,000 personal bond and deposit of 10% of that amount, could be revoked or modified, but a proper showing of a reason for revocation or modification was required to be made. Drew v. U. S., 1967, 384 F.2d 314, 127 U.S.App.D.C. 362.

Absent request by government or showing of reasons for revocation or modification of bail in first-degree murder case, and a hearing thereon, court could not revoke or modify earlier bail order and commit defendant pending trial. Id.

Where defendant convicted of larceny had been granted bail pending appeal, although he had been arrested 27 times on 43 charges and had been fined or sentenced to imprisonment 29 times, and after he was released on bail he pleaded guilty to charges of breach of peace and abusing police officer and was arrested for operating motor vehicle without license and for changing lanes in an unsafe fashion, his bond would be revoked upon government's motion. U. S. v. Reed, D.C.Conn.1968, 284 F.Supp. 323.

Where defendant while on preconviction bail was indicted for smuggling and concealing heroin and cocaine and while on bail pending appeal from conviction for sale of heroin was charged with concealing heroin, court, in exercise of its discretion would grant government's motion to set aside bail on appeal and defendant would be remanded to custody. U. S. v. Erwing, D.C.Cal.1967, 283 F.Supp. 577.

10. Mandamus

Applications for mandamus against trial judge who declined to relieve accused of counsel at posttrial hearing to determine whether government's case was tainted by use of evidence derived from records which had been illegally seized were denied under the circumstances. Legal Aid Soc. of New York v. Herlands, C.A.N.Y.1968, 399 F.2d 343.

§ 3149. Release of material witnesses

If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpena, a judicial officer shall impose conditions of release pursuant to section 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

Added Pub.L. 89–465, § 3(a), June 22, 1966, 80 Stat. 216.

Historical Note

Effective Date. Section effective 90 days after June 22, 1966, see section 6 of Pub.L. 89–465, set out as a note under section 3146 of this title.

Legislative History. For legislative history and purpose of Pub.L. 89–465, see 1966 U.S.Code Cong. and Adm.News, p. 2293.

Library References

Witnesses ⇐19, 20.

C.J.S. Witnesses §§ 32, 33.

§ 3150. Penalties for failure to appear

Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure,

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FOOTNOTES

1. The text of the statute is as follows:

§ 3149. Release of material witnesses."-If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpoena, 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure" (Rules, part 2) (June 22, 1966, P.L. 89-465, § 3(a), 80 Stat. 216.).

2. 8 C.F.R. § 287.3:
§ 287.3. Disposition of cases of aliens arrested without warrant. An alien arrested without a warrant of arrest under the authority contained in section 287(a)(2) of the Immigration and Nationality Act shall be examined as therein provided by an officer other than the arresting officer, unless no other qualified officer is readily available and the taking of the alien before another officer would entail unnecessary delay, in which the event the arresting officer, if the conduct of such examination is a part of the duties assigned to him, may examine the alien. If such examining officer is satisfied that there is prima facie evidence establishing that the arrested alien was entering or attempting to enter the United States in violation of the immigration laws, he shall refer the case to a special inquiry officer for further inquiry in accordance with Parts 235 and 236 of this chapter or take whatever other action may be appropriate or required under the laws or other regulations applicable to the particular case. If the examining officer is satisfied that there is prima facie evidence establishing that the arrested alien is in the United States in violation of the immigration laws, further action in the case shall be taken as provided in Part 242 of this chapter. An alien arrested without warrant of arrest shall be advised of the reason for his arrest and his right to be represented by counsel of his own choice, at no expense to the Government. He shall also be advised that any statement he makes may be used against him in a subsequent proceeding and that a decision will be made within 24 hours or less as to whether he will be continued in custody or released on bond or recognizance. Unless voluntary departure has been granted pursuant to § 242.5 of this chapter, the alien's case shall be presented promptly, and in any event within 24 hours, to the district director, or acting district director for a determination as to whether there is prima facie evidence that the arrested alien is in the United States in violation of law and for issuance of an order to show cause and warrant of arrest prescribed in Part 242 of this chapter.

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THE TRANSITION FROM UNDOCUMENTED TO DOCUMENTED BY WAY OF THE JUDICIARY

By:

Albert Armendariz, Sr.
United States Immigration Judge
El Paso, Texas

Prepared for:

National Hispanic Conference
on
Law Enforcement and Criminal Justice

The Shoreham Hotel
Washington, D.C.
July 28-30, 1980

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The National Hispanic Conference on Law Enforcement and Criminal Justice is to be commended for including a section on undocumented workers in this conference involving the problems of the Spanish speaking. I am delighted and proud to have been invited to participate by presenting this paper.

The Spanish speaking, without a doubt, constitute the bulk of the undocumented workers in the United States. It is a mistake to conclude that Hispanic illegals are all from Mexico. Just recently, my docket for deportation proceedings in El Paso, Texas contained 80% Central and South American Respondents to deportation charges. The influx of this segment of the South American population as illegals is obviously on the rise. This is a phenomena with little if any reliable statistical data in which the need for research and analytical assessment abounds. Every Hispanic who is here by virtue of U.S. Citizenship or U.S. Resident status is affected in his daily life by this constant and uncontrolled addition to our numbers within the United States. In terms of jobs and assimilation, the problems posed for us as Hispanics by this virtual invasion are profound. Personally, we each are torn between our love for those with a similar background, and the understandable desire to protect the gains that we have made as Hispanics in our relationship with the dominant society. We find ourselves between the devil and the deep blue sea; if we think with our hearts, we acclaim for the illegals, if we think with our heads, we are against them. Sometimes we are so much against them that we are willing to embrace the Rodino concept that employers of illegals must be held criminally responsible

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for hiring illegals. In those moments of frustration, we momentarily forget that John Q. Employer is eager enough to deal us out of coveted positions without having the legal excuse that he did not know whether we were legal or illegal when he refused to hire us. We know that the Rodino concept is not the solution. Yet, no solution is apparent or easy. It is my sincere belief that many of the answers to the problem of the illegal will emanate from conferences such as these. The reason for this is simple. There is no other ethnic group that suffers more from the phenomena of the undocumented presence in the United States. There is no other group, therefore, that has a greater responsibility to itself and to our country to seek and find answers to each of the many facets of the problem of the undocumented worker than does the Hispanic legal community.

It is a common axiom that a problem reduced in size is less of a problem. Immigration and Naturalization recognizes this truth and proceeds to reduce the population of these inhabitants without papers by the deportation process. Yet it is also this process that offers a major avenue to the reduction of the total number of undocumented aliens in our midst by converting them into documented aliens with a future that not only includes legal participation in the benefits of our society, but their eventual entrance into the body-politic of our society. There they can be helpful to us as citizens entitled to cast their vote in all matters in the political process that concern us as a whole. I will never forget my confrontation with a certain politician, recently a candidate for President of the United States, when I was National President to the League of United Latin American Citizens (LULAC) and he was running for the Governorship of Texas. When I asked him what he intended to do for our group regarding the absence of Judges and other high State officials of Hispanic heritage in the State of Texas, he said: "Before I answer your question, tell me, how many votes do you figure that you can deliver for me?". The awful truth is that the undocumented worker, in addition to all of his other maladies, represents an albatross attached to our necks, in all of our political endeavors, because he cannot cast a ballot.

At the outset of his administration, President Carter recognized the feasibility of reducing the ranks of the undocumented when he made his amnesty proposals. He correctly reasoned that the humanitarian dictates against the deportation of persons who had been in the United States a number of years, albeit illegally, outweighed the right of the sovereign to deport. His approach would have made it possible for an additional and substantial number of these people to be placed under the protection of our laws. In terms of our interests, this proposed new law would have the effect of including into the body politic many persons who are now deadwood in the political clout we must have to secure future advancements in this society by our children and theirs.

The use of the term "amnesty" in the President's proposals was, in my view, a major cause of its lack of success. Our country had a recent dose of amnesty after the Vietnam episode. Unfortunately, predictable opposition from all sides all but killed the legal project for change in our Immigration laws. Yet, the thrust of the movement lives and deserves our support.

The Select Committee on Immigration and Refugee Policy is a direct by-product of the President's proposals for change in our Immigration laws. Their reports and subsequent action by Congress are still to come, and the opportunity for this conference to submit proposals remains open.

The essence of this paper is to discuss the present, rather than the future, status of Immigration law, within the confines of length and time, under the premise that Congress has already acted to place ample amnesty provisions in the law where it presently offers an important avenue from illegal to legal status.

An important avenue of amnesty now in the statute is the right to Registry.[1] By pursuing this avenue, an undocumented resident who has been in the United States since prior to June 30, 1948 may become a fully legal and documented alien in the United States. The salient factor in this procedure is that it is easy to obtain and applies to all nationalities outside of quota restrictions. If an applicant is denied registry, an order to show cause usually follows, and the application may be renewed before an Immigration judge, who passes on the matter by de novo hearing.

Unfortunately, the Spanish speaking undocumented resident would rather remain undocumented than have to make a trip to the Immigration Service office. The fear is real and well-founded for all applications for such discretionary relief under Immigration Law and Procedure depend on sufficient proof being presented by the alien to show himself deserving of the relief sought without question. Still, many thousands of Hispanics come under the protection of this law who have not yet applied for its benefits. Agencies serving the undocumented should be very sure that the person possesses proof of all four of the items required to be proved: Social Security and/or census records can be very helpful in fulfilling the requirement of proof of continuous residence in the U.S.; Local police files can readily be tapped for proof of absence of a criminal record and on the issue of good moral character; and Public Service groups such as LULAC and the G.I. Forum can be very helpful in the task of finding those eligible for this relief and in urging them to apply for it.

The basic characteristic of the law of registry is the doctrine of limited amnesty. The section provides for forgiveness of a long tenure of illegal residence following an undocumented entry, depending on proper comportment and good moral character. The section at this time provides for registry rights in any person who has continuously resided in the U.S. since June 30, 1948. The McCarran 1952 Act had changed that key date from 1928. Previously, this key date was set in 1924. The June 30, 1948 update is found in 79 Stat. 920 as of October 3, 1965.[2]

The Hispanic community would be wise to concentrate on a vigorous effort to discover those eligible for registry and to see that all those entitled to it are duly registered as documented aliens eventually eligible for U.S. Citizenship.

Only recently included in the ameliorative avenues open to Western Hemisphere aliens is the right of adjustment of status under Section 245 of the Act.[3] Congress opened this door to documentation for Western Hemisphere aliens without the necessity of their returning to their country of origin to use the Consular visa process as of January 1, 1977. You will note by its terms that it is available to aliens from all countries. The key to the benefit of its provisions is an entry with inspection and the availability of a visa. Its existence and expansion to Western Hemisphere aliens is another manifestation of Congressional intent to make legal residence more easily available in close relative situations by erasing the necessity of their returning to their native land to secure a visa. This procedure must be regarded as a most significant development in the treatment of the undocumented Hispanic by Congress.

The interpretation of its provisions has led to three major hurdles that must be faced by the applicant in his pursuit of this remedy: (1) the act gives a sacrosanct importance to the fact of last entry being inspected. Many Hispanics do not retain the proof of such inspected entry, and the practitioner is hard pressed to locate secondary evidence to establish eligibility for this relief; (2) the doctrine of "pre-conceived intent" has developed. This is a "court-made" doctrine relating to persons who obtain non-immigrant documentation with the pre-conceived intent of evading the consular process that on discovery renders them ineligible for adjustment because of such intent. A finding of pre-conceived intent could be devastating to the applicant should he/she be ruled to fall within the provisions of the inadmissibility statute as a person who has sought to procure documentation by fraud (Sec. 212(a)(9), Immigration & Naturalization Act); (3) the requirement that a visa must be immediately available to the applicant were the application being made at a consulate abroad rather than at the local INS office for adjustment has been strictly construed. The visa must be available quantitatively (regarding the quota of the country of origin) or the application may be summarily denied.

An outstanding feature of this procedure, now available to Hispanics, is the fact that there are appellate avenues for the denial of the adjustment. An appeal lies from the District Director's denial by renewing the application before an Immigration Judge after an order to show cause is issued. The regular course of appeal lies from a denial of adjustment by the Immigration Judge. Compare this to the visa process where the Consular visa officer's denial of a visa is unassailable and unappealable for any reason, and you have ample reason to become excited over this relatively new avenue for the proper documentation of aliens.

Probably the most prolific avenue to convert an undocumented alien into a legal resident alien is the route of suspension of deportation.[4] This is a true judiciary remedy, for only the Immigration Judge can accept the application for suspension of deportation and pass on its merits. 8 CFR 242.8, 242.21 (1979).

Historically, the Congressional intent regarding the procedure to be used by Western Hemisphere aliens (mostly Hispanic) in securing legal residence has been to require their use of the Consular visa process. That is to say, Western Hemisphere aliens were required to leave the country and obtain a visa at their home United States Consulate, thereafter to effect their legal re-entry into the country. The remedy of suspension was denied to this group (except under certain strict conditions) by the basic McCarran Act of 1952 until January 1, 1977, when Congress made the remedy available alike to all aliens. This remedy differs from registry, not only in the time element of continuous residence or presence, but in its inclusion of the requirement of extreme hardship. The process is made difficult and tedious. Usually, each application is referred to Investigations in the Immigration Service, a process that might take years to complete. Even if successful at the administrative court level, the grant must be referred to Congress for approval. This is because each grant represents a violation of the Congressionally set quota limitations for the country of origin of the applicant, the theory behind this part of the statute being that only Congress can increase the quota of immigrants allowed to obtain legal status. The congressional process takes years.

In my first written opinion in a case appealed to the Board of Immigration Appeals, I made the following observation:

> I view with alarm the realization that an attorney representing a convicted felon has a better chance of obtaining a suspension of the sentence imposed on his guilty client than the Immigration attorney has of obtaining suspension of deportation for his innocent client from an Immigration Judge.
> Matter of J.O., A 23 648 616 - El Paso, decided September 6, 1979; Upheld - Board of Immigration Appeals, November 14, 1979, with no written opinion.

Any student of alien rights recognizes the principle that an alien has no substantive rights (he does have the right to procedural due process to a certain degree) to enter or stay in the United States which have not been given to him by Congress. Congress has consistently included in the body of Immigration laws, avenues for the amelioration of the harsher aspects of the law. Usually, these ameliorative provisions are humanitarian in nature and geared to the American principle of family life. Interpretation and application of the standards set by Congress is unusually harsh by both the agency and the Immigration Judges. Yet, the underlying factor here is that we are dealing with congressionally given rights.

The philosophy behind these ameliorative provisions is that the *Attorney General knows best*. So it is the Attorney General's discretion that is invoked. The problem with this procedure is that the Attorney General is, in actuality, a thousand different persons. His discretion is disseminated like rain drops by delegation of powers to agency personnel on a world-wide basis. So the idiosyncrasis and philosophy of those exercising the discretion is of the greatest importance. The Immigration Judge is bound by precedents. But, absent a Supreme Court decision dispositive on a given point, he can usually find ample authority to sustain his own philosophy in his decisions in any particular case. All of these considerations must be kept well in mind in the pursuit of this type of relief.

The application for suspension of deportation and for adjustment of status to that of an alien lawfully admitted for permanent residence is directed to the Immigration Judge's discretion. The person applying for such relief bears the burden of factually establishing themselves within the statutory prerequisites. After that is done, the alien must prove that he/she is worthy of the favorable exercise of that discretion. The requirements of eligibility are: (1) continuous physical presence within the U.S. for at least seven years immediately preceding the date of application for suspension of deportation; (2) good moral character throughout that period; and, (3) extreme hardship to the deportee or close family which would result from his/her deportation.

The development of the body of law as interpreted by the Immigration Judges, the Board of Immigration Appeals and the courts on each of the three elements of this relief is what I was referring to in my statement in Matter of J.O., supra. The meaning and application of its provisions, as matters now stand, has resulted in a highly technical and utterly confusing set of precedents almost impossible to apply with any degree of certainty. The result of this is that many persons surely meant by Congress to be included in its provisions are denied suspension and many who should not have it are granted the right to remain in the U.S.

The statute has two sections to it. The first is for those never convicted of a crime, and the second applies to those who have been.[5] The person who has survived the statutory time in the U.S. is given, when receiving this relief, complete absolution for past criminal activity. This avenue for relief is amnesty for all criminal activity occurring before the statute period.

Judge Maurice Roberts speaks of the total effect of these ameliorative provisions in his treatise clarifying the nature of deportation in the following terms:

> Whatever else may be said, it is

> certainly no longer generally true that deportation is merely a protective measure to rid the United States of aliens Congress deems undesirable, who in any event are only being sent back to their countries of origin and allegiance. This notion may still have some validity where the alien involved is a recent entrant who came in surreptitiously or was admitted temporarily as a nonimmigrant and violated the conditions of his admission. It can hardly be applied in any realistic sense to an alien who has been here for many years, who has established roots here, and whose deportation will separate him from his home and family life and deprive him 'of all that makes life worth living'. Although the deportation of such an alien is not literally imprisonment, so that the deportation proceeding itself is not technically a criminal prosecution, the consequences to the alien may be far more devastating than a short jail term or other criminal penalty.
> Ng Fung Ho v. White, 259 US 276, 284 (1922);
> Interpreter Releases, Volume 57, No. 13 at 161.

Yet, ample authority is developing urging the more humane approach to these applications. See Vargas Banuelos v.INS, 466 Fed.2d. 1371, where the Fifth Circuit rules that Deportation statutes are to be construed narrowly against the Service. See also Bacher v. Gonzalez, 347 U.S. 637 (1954). In Mashi v. INS, 585 Fed.2d. 1309 at 1314, we find a perfect elucidation of what should be the treatment of these statutes by the judiciary endowed with the power to apply them and why:

> At page 1460: "Led by the U.S. Supreme Court, the Federal Courts have established a pro-alien, anti-deportation policy of statutory interpretation responsive to Congress' intent . . . ."

> The Court then quotes Delgadillo v. Carmichael, 332 U.S. 388, in saying: "We resolve all doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment and exile."

I hope that the seminar on the undocumented worker scheduled for this conference will give us the time to develop the details of the various forms of relief now available for the conversion of the undocumented during proceedings whose basic purpose is to rid the country of their presence by an order of deportation or voluntary departure. We must make both the public and the Bar more aware of the benefits made available by Congress to the Respondents in Deportation who have been here for several years, who have obeyed our laws and acquired roots, and whose only desire is to secure that coveted "green card".

Submitted by
Albert Armendariz, Sr.

FOOTNOTES

Footnote 1. Section 249, Immigration & Nationality Act, 8 USC 1259, reads as follows:

> A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to July 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he --
>
> (a) entered the United States prior to June 30, 1948;
>
> (b) has had his residence in the United States continuously since such entry;
>
> (c) is a person of good moral character; and
>
> (d) is not ineligible to citizenship.

Footnote 2. As amended by Section 109(d) of the Act of September 21, 1961 (75 Stat. 535).

Footnote 3. Section 245(a), Immigration & Nationality Act, 8 USC 1255, reads as follows:

> The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is approved.

> (b) Upon the approval of an application for adjustment made under subsection (a), the Attorney General shall record the alien's lawful admission for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under section 203(a) within the class to which the alien is chargeable, for the fiscal year then current.

Footnote 4. Section 244(a), Immigration & Nationality Act, 8 USC 1254(a), reads as follows:

> As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who applies to the Attorney General for suspension of deportation and --
>
> (1) is deportable under any law of the United States except the provisions specified in Paragraph (2) of this subsection; has been physically present in the United States for a continous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or,

Footnote 5. Section 244(a)(2), Immigration & Nationality Act, 8 USC 1254(a), reads as follows:

> (2) is deportable under paragraphs (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of Section 241(a); has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

IMMIGRATION LAW

By:

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National Center for Immigrant Rights
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Prepared for:

National Hispanic Conference
on
Law Enforcement and Criminal Justice

The Shoreham Hotel
Washington, D.C.
July 28-30, 1980

INTRODUCTORY NOTE

Peter Schey, of the National Center for Immigrant Rights in Los Angeles addressed the conference workshop on Undocumented Workers. Mr. Schey discussed three issues of great concern to Hispanics in the area of Immigration Law: The "Texas School Case"; Local police aiding I.N.S.; and, A new amendment in Congress which may severely restrict the access of undocumented persons to the court system.

Due to a last minute cancellation, the workshop on Undocumented Workers was left with only two speakers. With less than a week to go before the conference, we were honored to have Mr. Schey agree to speak to this workshop on current issues in the area of Immigration Law. The short notice, as well as Mr. Schey's position as lead-counsel in the Texas School Case, did not permit him to prepare a written document for inclusion in these proceedings.

In light of this situation, I prepared the following synopsis of Mr. Schey's presentation. The reader should be aware that there is an extensive history behind each of the mentioned issues. Time constraints allowed Mr. Schey to only briefly touch on the current status of the issues. As this was the case, my discussion is in line with Mr. Schey's scope.

Tapes of this workshop were transcribed for reference in the preparation of this paper. The availability of this resource allowed me to draw as much as possible from Mr. Schey's own words. In addition, I was able to obtain a copy of Judge Woodrow Seal's decision in the

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Texas School Case which I regularly cited to in the explanation of the status of that case.

Part I of the paper is carefully cited to the information sources. Judge Seal's opinion is cited as well as Peter Schey's presentation so as to avoid confusion. Parts II and III were prepared directly from the tapes of the presentation, therefore, I felt it unnecessary to repeatedly cite to Mr. Schey.

In attempting to present Mr. Schey's viewpoint on these issues, I included much and left much out. I hope that the end result captures the essecne of the presentation.

Madonna A. McGwin, Esq.
Conference Coordinator/
Editor

I. The Texas School Case

Prior to September 1, 1975 the Texas Education Code Ann. title 2 §21.031 (Vernon, 1972) provided that all children between six and twenty-one years of age were entitled to attend public schools in the Texas school district where they lived.

In April of 1975, the Texas Attorney General issued an opinion, pursuant to a specific request made by the Commissioner of Education, which stated that all children who resided in Texas were entitled to a free education under the Texas Education Code. He left no question as to whether undocumented children were to be included in this: they were. In Re Alien Children Education Litigation, Opinion at 11.

In May of 1975, without any documented studies, assessments, or debate, the Texas State Legislature amended the code to re-restrict access to the public schools to only those children who were U.S. Citizens or who came into the U.S. legally. Schey, Peter, Presentation at National Hispanic Conference on Law Enforcement and Criminal Justice, July 28-30, 1980. The Court in the Alien Children case concluded that the amendment was a direct response to the Attorney General's opinion. Id. at 13.

This amendment was initially challenged in the State courts, but was upheld by the Texas Supreme Court. Schey, supra.

In response to these actions, there was a flurry of lawsuits filed which challenged the stated action. Approximately 17 suits were filed. Schey, supra. Upon a finding that the claims involved common questions of fact and that centralization of the claims in the Southern District of Texas would "serve the convenience of the parties and witnesses" and "promote the just and efficient conduct of the litigation", the cases were consolidated in their claims against the state. Alien Children at 3. The United States was allowed to intervene, asserting that the Texas Statute violated the Equal Protection Clause of the U. S. Constitution.

A. Equal Protection?

The Equal Protection clause of the U.S. Constitution states, "No state shall....deny to any person within its jurisdiction the equal protection of the laws". The courts have traditionally interpreted this as insurance that legislative classifications are fair and that similarly circumstanced persons are treated alike. See Alien Children at 14. As stated again and again, the states do, in fact, possess wide discretion in making classifications unless the classification is based on a suspect criteria or if it affects a fundamental right or interest. Alien Children at 14; also see Frontiero v. Richardson, 411 U.S. 677 (1973); Shapiro v. Thompson, 394, U.S. 618 (1969).

Even if no suspect classification is used, any classification must be reasonable, not arbitrary, and rationally and fairly related to a valid governmental purpose. Alien Children at 14; See also, McLaughlin v. Florida, 379 U.S. 184, 191 (1964); McGowen v. Maryland 366 U.S. 420, 425-26 (1961). If the Statute is based on a suspect criteria, or a fundamental right or interest is affected, the statute can only be upheld if it is specifically meant to further a compelling governmental interest. Alien Children at 14; Shapior v. Thompson 394 U.S. 618 (1969). Under this major line of reasoning, the attorneys for the class made their basic arguments.

B. The Interest Directly Affected: Education

The attorneys distinguished this case from the earlier case of San Antonio Ind. School Dist. v. Rodriquez, 411 U.S. 1, (1973), where the Supreme Court had reviewed the financing of schools in Texas and found that Education was not a fundamental right and therefore stated that "no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process". Id. at 37. Rodriquez dealt with financing and the quality of education. The Alien Children case was unique because it was not a situation where there was merely some kind of disparity or lack of equality in the education which was being provided, but rather, there was a total denial of access to education to an identifiable group of children. Schey, supra. The lawyers argued that due to this total denial of access to education the court should provide special care in its review of the law. In other words, the issue is not the amount or quality of the education provided, but rather the issue is whether "education is so closely connected with the guaranteed rights that a total deprivation of education should be closely scrutinized." Alien Children at 18.

The court upheld the distinction between the present case and the Rodriquez case when it concluded that "when only access to education is deprived, holding that a fundamental interest is invclved does not occasion an unprecedented upheaval which would terminate state control over education. An interest in a governmental process or program may be deemed fundamental even though the government cannot be required to assure or even to determine what constitutes enjoyment of that process or program". Alien Children at 27.

C. Suspect Classification

1. "A Discrete and Insular Minority"

The Texas statute involves non-citizens, and as such, it was argued that non-citizens are a insular, discreet minority, peculiarly subject to prejudice and discrimination, and subsequently, virtually powerless politically within the U.S. Schey, supra. The court recognized that "undocumented aliens are saddled with such disabilities,...subjected to such a history of purposeful unequal treatment (and) relegated to such a position of political powerlessness...that untreating them as more discreet and insular than resident aliens may be justified". Alien Children at 31.

In conclusion the court found that "...the equal protection clause protects undocumented aliens because they are "persons within the jurisdiction of the state. State discrimination against illegal aliens is not necessarily permissible and when a fundamental right is infringed by that discrimination the state must provide a compelling justification". Alien Children at 38.

2. Exclusion on the Basis of Wealth

The Texas Statute provides that any undocumented child may attend school if that child's tuition is paid. The statute was found to discriminate on the basis of wealth.

Attorneys on the case brought in experts to testify to the fact that the parents of these children pay taxes, and these same taxes go to the financing of education in Texas. In the State of Texas, the majority of the financing of the educational system comes from consumer taxes (i.e., sales taxes and *ad valorem* property taxes) Schey, *supra*. The court accepted evidence which conclusively showed that undocumented aliens contributed to government revenues to the same extent as others with similar income. "Nearly all recent studies which discuss the contributions of undocumented aliens to local, state and federal tax bases strongly suggest that this group pays more into their tax structure than they take out through social services". Alien Children at 42.

The court held that, "Equal Protection does not imply the abolition of differences created by wealth. Enabling a person to have access to a necessary service or program neither assures him the same access which others have nor requires that any burden imposed be proportioned to his individual circumstances". Alien Children at 42.

3. Innocent children

The Texas statute penalizes innocent children because of the acts committed by their parents. Alien Children at 43. Although strict scrutiny is not necessary where a classification punishes children for acts committed by their parents, the statute is invalid if they are not substantially related to permissible state interests. Alien Children at 44; See also, Lalli v. Lalli, 439 U. S. 250, 264 (1979).

4. National Origin

The court recognized that there has been a definite history of invidious discrmination in Texas against persons on account of their national origin, in addition to their status is illegal entries. Although the Texas statute cites the illegal entry status as the basis of the law, the court found no evidence that non-Hispanic aliens are intentionally treated differently. Alien Children at 45.

D. The State's Rational

The state's major defense argument stated that, notwithstanding the fact that the Equal Protection clause does not apply to undocumented aliens and thus discrimination against members of that class is permissible no matter how invidious, by providing educational opportunities to undocumented alien children, the opportunities for other children would be decreased. Alien Children at 45; Schey, supra.

The court rejected the state's argument and stated that it saw the problem as one where the State of Texas did not want to educate the children, not that they could not educate them. Schey, *supra*. In fact, evidence suggested that the state was currently anticipating a 350 million dollar surplus in its general revenue budget and the Texas Education Agency was anticipating a massive surplus in its budget. *Id*. The Judge, in essence, rejected all the state's arguments and accepted the plaintiff's case that it was just untenable in this day and age to isolate a group of children, and to make them pay a penalty which could cause them irreparable psychological, social and cultural harm. The judge found that the Equal Protection clause did protect them, and that the State of Texas simply had no compelling grounds upon which to burden, not only these children for the rest of their lives, but the whole society with an identifiable group of persons who in the future would be over-represented in the welfare rolls, the Criminal Justice calendar, and so forth. In making this decision, the judge analyzied the long term effects of not educating these children. Id.

E. Resulting Decision

Judge Woodrow Seals issued an injunction on June 21, 1980, which would have required the State of Texas to admit undocumented children to Texas Schools within 4 weeks of his opinion, that is, once the school had started a fall semester. He said "I planned that my decision should go into effect in four weeks and I'm not going to postpone my decision any longer...These children have been out of school long enough". Schey, supra.

Unfortunately, the 5th U. S. Circuit Court of Appeals in New Orleans, on August 13, 1980 indefinitely stayed Judge Seals decision pending further appeal. The Washington Post, Wendesday, August 13, 1980, p. A22. This pending appeal could take up to two to three years to finally settle.

II. Local Police

The local police issue is another arena in which one can see the noose tightening around the necks of undocumented immigrants with the U.S. This is an issue which the participants of the National Hispanic Conference could come out with a strong recommendation. In this particular instance there's really a need for Hispanics to meet with the Attorney General. Peter Schey met with the Attorney General, along with Al Perez (previously from MALDEF, and now with the Department of Education). In all, a number of people concerned with the problem of local police have met with top administration officials on this issue and, unfortunately to date, they have not had very good results. However, the problem is very simply this: It is clear that local police do not have the authority to implement federal administrative immigration laws. The word "administrative" is used because it's not clear that local police don't have the power to administer federal criminal immigration law. It is a crime to enter the U.S. without any document. It is a felony if done a second time after being deported from the U.S. It is a misdemeanor to not register with the Immigration Service.

Local police are bound by State laws while enforcing criminal law. They have no authority to enforce administrative laws. What does that mean? It means that they have no authority to arrest somebody for purposes of a federal deportation hearing. That remains an administrative decision. No local authority should be able to arrest somebody for purposes of putting them in a administrative proceeding.

One good thing that came out of the meeting with Attorney General Griffin Bell and Drew Days, was that the Justice

Department clearly came out in the summer of 1978 and said local police should not enforce administration immigration laws. However, they remained silent on the question of criminal immigration laws. Despite this decision by the Justice Department, local police continue more than ever, and increasingly, to arrest people for immigration violations. They claim to be arresting them for criminal violations, but in fact, they are holding them for INS. The only thing they could validly be arresting them for is not having papers in their possession, which is a misdemeanor. Interestingly enough, there have only been four criminal charges brought against undocumented aliens in the last 10 years. We find tens of thousands of people ostensibly arrested by local police under that section of the law. They put down on the booking sheet that they are arresting a person for failure to have documents in possession. Every single month thousands of people are being arrested by local police for that reason. In ten years they've only tried 4 people. There's clearly a national policy not to prosecute people under that section of the law. The entire activity by local police is nothing more than a facade to assist the Immigration Service in increasing its statistical data on apprehensions and deportations. The Immigration Service welcomes that assistance.

What happens to people when they are arrested by the Immigration Service? It's like the old wild west. It's an old cowboy situation. They are arrested by local police. They are not admitted for bail, because the local police have no idea what kind of bail to apply because they are really just holding them for deportation. They are not brought in front of the magistrate under either Federal or State criminal law. Detainees are not informed of any rights. Both State and Federal criminal procedure requires that people be advised of basic rights, (i.e., the right to a lawyer, the right to remain silent, etc.). This scenario is repeated in thousands of local police departments around the country. The only remedy available at the moment is to go, one by one, and sue in each district. It is an impossible task which will take another 50 years if one desires to cover every singel police department in the country.

A clear articulation of national policy is needed to provide an alternative. The National Center for Immigrant Rights proposed a reolution which they felt could become the basis of a national policy for the Immigration Service. The resolution was basically that, if the local police pick somebody up on a valid State charge and during the course of interrogating it is discovered that the person is illegally present in the U.S., they could contact the Immigration Service and hold the person for 24 hours. That 24 hours comes right out of the Immigration Service regulations which say that the Immigration Service is authorized to hold people for 24 hours. After the 24 hour period they have either got to release the person or initiate a deportation hearing. What was felt to be an imminently fair proposal to the Justice

Department has not yet been rejected outright, but has been on the burner now for about 24 months and has not been accepted by the Justice Department.

III. Access to Courts

At the present time undocumented immigrants in the U.S., a vast majority of whom cannot afford big time attorneys, rely upon the legal services agencies to gain access to the court system. That access is crucial because without it, the exploitation becomes institutionalized. Even this limited access is exercised with great fear and even greater apprehension. It takes a tremendous amount of courage for an undocumented person to step forward and say "even though I'm undocumented, I intend to go and to try and vindicate some landlord-tenant problem, or I intend to go and vindicate, in the courts, some related problems or exploitation that I have been subjected to". It's not easy to encourage people to step forward and attempt to vindicate their rights. And yet, is is essential for the survival of their family.

Currently, Legal Services offers free legal counsel to undocumented aliens. Legal Services have represented not only farm workers but Haitian people applying for political asylum; they have represented Vietnamese people applying for political asylum; they have represented people from Eastern Europe who have applied for political asylum; they have represented people who had equities in the U.S., but who were not U.S. citizens; they have represented those who need somebody to stand next to them in a court of Justice and try to obtain Justice for them.

There is currently a proposal in Congress which will come up towards the end of September which seeks to amend the Legal Services Corporation Act, to say that money for the Legal Services Corporation can only be used to represent U.S. citizens, people with green cards, and the like. The so called Schumway Amendment will be considered, not as an amendment to the budget of Legal Services, but as an amendment to the actual act itself. It has been introduced precisely because a large segment of Republicans, along with a good number of Democrats, feel that the interpretation of the Legal Services Act has been too liberal. The Amendment would do away with the current interpretation and very clearly state that the only people who can be represented by Legal Services are U.S. citizens and people with green cards. The results are inevitable. It will totally cut off the access to courts for undocumented aliens.

A strong recommendation should come out of this National Hispanic Conference opposing any Congressional restrictions on the utilization of legal services resources based on alienage. Those resources should be made available from a humanitarian standpoint, from an egalitarian standpoint, and from a justice standpoint. Those resources should be available to all persons regardless of their alien nature, regardless of their immigration status. Legal Services is willing to agree to a restriction on representing adjudicated deportees. That standard is reasonable because at that point there has been a legal determination that the person is deportable from the U.S. But until the immigration judge makes that determination, any determination that is made represents a predetermination of the status of the undocumented person. Legal Services is lobbying strongly to be allowed to represent all people equally, farily, and justly. It is asked that the participants of this conference support Legal Services in their efforts.

Summary
by:

Gilbert Varela, Esquire

Final Policy Recommendations

Workshop Participants

UNDOCUMENTED WORKERS WORKSHOP - SUMMARY

The Immigration Workshop was attended by the following persons: Linda Reyna Yañez, Adolfo B. Saenz, Pablo Santiago, Jr.; Winifred Reed, Ruben De Luna, Lupe Salinas, Chris Fuentes, Jaime Gutierrez, Audrey Anita Rojas Kaslow, Laura de Herrera, Father Jose J. Gallegos, Albert Armendariz, Guarione M. Diaz, Irene C. Hernandez, Leonel J. Castillo, A. Ralph Zurita, Laura Wilmot, Peter A. Schey, Luis Wilmot, Pablo Sedillo, and Gilbert Varela.

The first presentation was made by Linda Yanez, Attorney of the Texas Rural Legal Aid. The topic was: "The Alien Material Witness in the Law". Mr. Jose A. Bracamonte, Attorney at the Legal Assistance Foundation of Chicago was not present at the conference and thereby his paper was not presented. Ms. Linda Yanez therefore proceeded to make her presentation at the time which has been previously scheduled for Mr. Bracamonte.

During the course of the presentation, Ms. Yanez accepted questions and comments from the workshop. There was unanimous consensus that the alien material witness as well as his family have been unjustly treated by the lengthy incarceration and high bails set. The trend of the discussions during the workshop was not to find means of going around the prime defendants' Sixth Amendment rights. However, it was felt that the Sixth Amendment rights to cross-examination of the defendant should not be obtained at the expense of the undocumented workers' due process rights. The bais on which the undocumented material witness is detained is based upon 18 U.S.C. § 3149 and

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§ 3146, which have been expressly interpreted to apply to a detention of undocumented witnesses by various federal appellate courts and the United States Supreme Court.

Thus, since the law as well as various cases are well-entrenched in supporting the rights of federal marshals to detain undocumented witnesses, it was felt that recommendations should be geared to amending policies which would change the procedural aspects on the detention of the undocumented witness.

Of most concern was the high bail which is placed on the alien material witness once he is detained. It was felt that this bail was manifestly unjust in view of a total reality that once the alien material witness is caught, he for all reasons is unable to pay such high amount of bail. The money which he at once had in his possession has been paid to the smuggler, who in turn uses such money to bail himself out within hours or days after incarceration.

Secondly, during the course of this discussion, various participants added that many States do not have a system of bail which can be made applicable to immigration detaining. This would add to the problem since a person, although he may be released from federal bail, would have to also put up bail in order to be relieved from the jurisdiction of the immigration service.

Ms. Audrey Kaslow, who is a United States Parole Commissioner, made special mention of the problems which occur once an alien material witness is detained. Ms. Kaslow stated that when a material witness has family, they are usually separated and taken to separate detention facilities. Sometimes the children, however, are kept with the adults although many of these adults are held for various common crimes. It was generally agreed that the alien material witnesses are not told what is going on, nor where their families are being held. No special effort is made by either the District Attorney's nor the Public Defender's Offices to inform the alien material witnesses or their families of the process that is taking place and where their families are being kept.

To add to the problem, there is inadequate legal advice given to the alien material witnesses. Usually, this is due to the fact that at times the interpreter takes a role of the attorney and advises the alien material witness that he or she should plead guilty to illegal entry, and thereby he or she would be released. It was felt overall that there was a general disregard for the Constitutional rights of the alien material witness at all stages of the legal proceedings.

As a consequence of the above discussions which went on for about two and one-half (2½) hours, the workshop participants made the attached recommendations pertaining to the alien material witness.

The next topic of discussion which took place in the Immigration Workshop was initiated by Albert Armendariz, Sr., United State Immigration Judge in El Paso, Texas.

Judge Armendariz's topic of discussion was: "The Transition from Undocumented to Documented by Way of the Judiciary". This particular discussion which took place was somewhat technical in nature since it dealt with the various intricate regulations and laws pertaining to the becoming of a legal permanent resident in the United States by way of the Immigration Court.

The attached recommendation was a result of a detailed discussion by Judge Armendariz, as well as feedback and comments from most of the workshop participants. At least one-third (1/3) of the workshop participants had participated or had been involved in an Immigration Court proceeding, and were therefore knowledgeable of some of the rules, regulations, or procedures of the Immigration Court.

Myself, as a Moderator, Ms. Linda Reyna Yanez, as well as a number of other participants made comment that the Immigration Judges should be separate and apart from the Immigration and Naturalization Service in view of the fact that they, as employees of the Immigration Service, cannot be adequately impartial in the Immigration proceedings. As employees of the Immigration Service, Immigration Judges tend to be biased towards the respondent during Immigration proceedings.

It was also discussed that the Board of Immigration Appeals should be given autonomy and should not be part of the total network of the Immigration and Naturalization Service.

One of the most heavily discussed topics was Section 244 of the Immigration and Naturalization Act, particularly called Suspension of Deportation. It was felt that it was extremely difficult to obtain relief through Suspension of Deportation proceedings mainly due to the fact that the factor of "extreme hardship" which is part of the Suspension of Deportation requirement was very hard to meet. It was felt that the intent and purpose of this particular section was watered-down, since the Board of Immigration Appeals has given a very strict interpretation of the extreme hardship factor.

It was specifically mentioned by a number of participants that the Immigration Court should be made to consider economic hardship as one of the primary factors in determining what extreme hardship is. Since most precedent decisions have excluded economic hardship as a main factor, it was felt that amendments should be made to the regulations, specifically 8 CFR (Code of Federal Regulations) so that a Judge could be more flexible in his interpretations.

Further, Father Gallegos accentuated the problems of those individuals who have been in the United States for many years, and yet because of a voluntary departure which took place during the seven (7) year period of residency in the United States, are unable to make applications for suspension of deportation. It was specifically mentioned that the case of Barragan, which holds than an individual who voluntarily departs from the United States by an Immigration Court order, loses the equity which was gained by the time lived in the United States prior to such voluntary departure.

It was felt that many individuals would be able to make applications for suspension of deportation and be successful in benefiting from Section 244 if the extreme hardship is modified and the Barragan case is reversed.

Judge Armendariz recommended, following his discussion, that Section 249 of the Immigration and Naturalization Act, which applies to registry, should be amended. Registry is the system by which individuals who have lived continuously in the United States since 1949 can make an application without a showing of hardship to become permanent residents in the United States.

Judge Armendariz stated that it would be beneficial to update the law of registry and instead of requiring that an individual live here since 1949, the law of registry be made applicable to those individuals who have been living in the United States for seven (7) years or more.

There was general mention and concern by the workshop that there are many United States citizen children who are being deported by "de facto" means when the parents, who are not U.S. citizens, are found deportable by the INS. The number of U.S. citizen children who are deported is estimated to be in the thousands. Before January 1, 1977, a child, no matter what the age was, could make a petition to immigrate his parents to the United States. Due to the many individuals who could make applications to become permanent residents through their children, the Congress changed the law which would allow a United States citizen child to make an application for their parent only when such child reached the age of twenty-one (21).

As a consequence, parents have to wait until the child is twenty-one (21) to become legalized. It was suggested that the Code of Federal Regulations should be changed so that the Immigration Service grants some sort of avenue which would practically allow the parents to remain in the United States until the child reaches the age of twenty-one (21).

There was concern that most detainees are unaware of their Constitutional rights once they are detained by the INS. Although there are some regulations that provide that the Immigration Service advise detainees as to their rights, it was felt that this is not done. Therefore, it was suggested by a number of the participants that all of the rights which are applicable to an immigration detainee should be posted at all INS detention places.

It was further stated that since most immigration detainees are indigent individuals, they should be allowed the benefits of an attorney during the course of the Immigration proceedings. And, that at all times, this individual should have access to an interpreter during all stages of the deportation process.

During the course of a deportation process, unless a detainee can afford counsel, he is made to face the deportation process on his own.

Lastly, the availability of relief under Section 241(f) of the Immigration and Nationality Act should be reinforced. It was the intent of Congress to allow those individuals who, through the use of misrepresentations obtained their immigrant visas and consequently, had children in the United States, to apply for relief under said Act.

At some point after immigrating, deportation proceedings are begun because of such misrepresentation. It was felt that Section 241(f) specifically was initiated to give relief to those persons who could show hardship to themselves and to their United States citizen children, and who have developed equities in the United States.

However, due to case precedent, the access to 241(f) was basically watered down so that the majority of persons who would be otherwise eligible for Section 241(f) cannot apply for such relief.

It was the feeling of the workshop that most forms of relief which were made available by Congress to undocumented persons, have been modified and almost done away with by the Immigration Courts as well as by the Board of Immigration Appeals. It was felt that by the use of regulations and statutory changes, the original intent of Congress should be reinstated.

The last topic of discussion was presented by Mr. Peter Schey, Director of the National Center for Immigrant Rights, Los Angeles, California. The topic of discussion was basically divided into three (3) areas: The Texas Childrens' School Case, Enforcement of Immigration Law by Local Police Departments, and Recent Restrictions of Access to Legal Services to Undocumented Persons as well as Changes that Should be Made in the Arrest and Detention of Undocumented Individuals.

The main theme of Mr. Schey's discussion was that there is an overall tendency throughout the United States to "tighten the noose" around the rights of undocumented individuals. Mr. Schey specifically discussed the recent case which he was involved in in Texas, whereby the Honorable Judge Seals, found that undocumented children in Texas had a basic Fourteenth Amendment Right to the use of the Texas public schools. The denial of the public school system to undocumented children was but a grave example of the recent trend to take away basic constitutional rights from undocumented persons.

It was therefore suggested that the conference take immediate and strong action to encourage the governor of the State of Texas not to appeal the decision of the Honorable Judge Seals. The discussion went further to point out that this kind of action by the State of Texas can encourage other States to move against undocumented children. There was a great deal of discussion as to the actual argument of the case, i.e., that undocumented workers in fact contribute a great deal of tax money but yet they cannot benefit on the services that such tax monies generate.

As to the discussion of local police enforcement of immigration law, and the arrests and seizures of undocumented workers, there was a great deal of participation from the total workshop. The main concern in respect to police enforcement of immigration laws was felt to be that the Attorney General should again reinstate prior policy announcements that police should not involve themselves in immigration law unless there is an independent criminal charge. However, such policy announcements have not been followed, and pretty much every police department has their own policy as to enforcement of immigration law.

A number of examples were cited by the workshop to describe the problems posed by irreverent and discriminate police action, most specially in small rural areas of the country. Pendent to this topic, the issue of bonds and lengthy detention by police departments was cited. Examples were brought out describing the immigration holds subsequent to a police arrest. Such immigration holds can last for periods of weeks. Most States do not have a uniform bond policy for immigration detainees. Once they are released to the Immigration agents, immigration detainees will either sign a voluntary departure or will have to remain incarcerated until a determination of their immigration case is made.

The other topic of discussion concerned the illegal searches and seizures of undocumented persons by INS. Mr. Schey gave a discussion as to the cavity searches which women have to undergo when the INS refers the detainees to a local detention facility due to the lack of detention space by INS. When an undocumented women is sent to a local police detention facility, she would always have to go through a cavity search, causing embarrassment and extreme emotional hardship on her. Every time the undocumented woman is returned to the local police detention facility, she has to go through that cavity search. In many instances, such dehumanizing searches will prompt the woman to forget about contesting the immigration's detention, and will instead agree to voluntarily depart from the country.

Included with the presentation by Mr. Schey, during the workshop discussion, it was urged that the Conference take a position on the Silva v. Levi case.

There are thousands of individuals in the country who are waiting to be called by the appropriate American consulates for their visa processing. Most of these individuals have to leave the country in order to obtain their immigrant visas once their preference numbers are called. It was felt that there would be no need for these individuals to depart from the country in order to obtain their immigrant visas. Adjustments of status should be an avenue by which Silva recipients should be able to finalize their immigration status.

Overall, the workshop tended to be a discussion of the problems rather than a pro and con argument as to the positions which the workshop should take. Some of the participants had a great deal of awareness as to the problems of the undocumented mainly because they are involved to some degree with immigration: Judge Armendariz was an Immigration Judge; Luis Wilmot, is an attorney at the Centro Para Inmigrantes in Houston, Texas. The other participants had, from time to time, experienced the problems of the undocumented due to their types of professions. In all respects, there was very little argument as to the positions, but rather the workshop made a whole-hearted attempt to narrow down the problems into a manageable number of recommendations.

Sincerely,

GILBERT VARELA

UNDOCUMENTED WORKERS WORKSHOP - RECOMMENDATIONS

THE ALIEN MATERIAL WITNESS

1) That a materiality hearing be held within 5 days immediately following the first appearance of the Defendant before a federal magistrate or district judge.

2) That the agency or personnel responsible for keeping material witness in custody and provide facilities to detain material witness separate and apart from persons accused of more serious crimes.

3) That juveniles be held in facilities separate and apart from adult facilities and/or juvenile detention centers.

4) That mothers and their minor children not be separated nor housed in a detention facility.

5) When families are separated all parties shall be notified of the disposition of their families' cases.

6) That if a material witness is held to assist the government in an immigrant criminal investigation the Department of Justice shall recommend prehearing voluntary departure to the District Director of INS.

7) Unaccompanied minor children under the age of twelve not be held as material witnesses.

8) That a 10 percent deposit be allowed on an immigration bond determined pursuant to existing INS regulation.

9) Alienage shall not be the sole basis in the setting or granting of a bond.

10) In cases where material witnesses cooperate, they be granted immunity and amnesty from deportation.

RECOMMENDATIONS

Recommended to:

Hispanic Caucus and Hispanic Advisory Committee, Senate and House Judiciary Committees and Select Commission on Immigration

1. That the Board of Immigration Appeals and Immigration Judges be given autonomy by an act of Congress.

Recommended to:

Attorney General and Commissioners of INS; Senate and House Judiciary Committees, Hispanic Causcus, Hispanic Advisory Committee to the Attorney General

2. Amend Title VIII Code of Federal Regulations to provide that an immigration judge in a deportation hearing may use the existence of economic hardship as a prime factor in deciding on whether to grant suspension of deportation.

Recommended to:

Senate and House Judiciary Committees, INS Commissioner

3. That the law of registry (sec. 249) Immigration and Naturalization Act be updated to allow registry as legal resident aliens of all persons who have been in the U.S. for a period of several years.

Recommended to:

Attorney General and INS Commissioner

4. Amend 8 Code of Federal Regulations to provide that a previous voluntary departure or deportation shall not be used to break the continuous residency requirement where continuous physical presence or residence is an element of the relief sought such as in the case of request of suspension for deportation.

Recommended to:

Attorney General and INS Commissioner

5. By amendment to 8 Code of Federal Regulations or by appropriate operations instruction, provide for low or no priority treatment in deportation proceedings of parents of U.S. citizen children under the age of 21.

Recommended to:

Appropriations Committee: House and Senate

6. Authorize legal services to represent aliens in all matters before the Immigration Services. Further, for the future provide a public defenders type system to ensure counsel for indigent persons involved in the deportation process.

Recommended to:

Senate, House Judiciary Committees, Attorney General, INS Commissioner

7. Provide by law or regulation that a guardian ad litum be required for all persons below the age of 18 years involved in the deportation process.

Recommended to:

Senate and House Judiciary Committees, Attorney General

8. Invoke and enforce a policy that requires an interpretor at all stages of the deportation process where a language difficulty exists.

Recommended to:

Attorney General

9. Implement those laws, regulations, and notices to ensure that all aliens actually receive notice of their rights, i.e., right to counsel, right to ask for and seek discretionary relief from agency or immigration judge and etc.

10. Reinstate availability of relief under 241 (f) Immigration and Natualization Act regardless of whether person is "otherwise admissible," or comes under the perview of section 212 (a)(14), so that persons legally in the U.S. who have U.S. citizens children or roots, shall not be deported. (overrule Reid decision of the U.S. Supreme Court)

Be it resolved that:

1. The Honorable William Clements, the Governor of the State of Texas, should reverse his order to the State Attorney General to appeal the federal court decision which held that all children, regardless of immigration status, are entitled to attend the public free schools. And further, that the Honorable William Clements should meet with Hispanic, church, and other community leaders in an effort to resolve the inhumane and intolerable policy of excluding undocumented children from attending the Texas public schools;

2. The federal Department of Education should take a firm position encouraging the State of Texas to educate all children residing in that State regardless of immigration status, and should explore a possible suspension of federal funds to the State of Texas while it continued to refuse to educate undocumented children even though federal funding is partially computed based on the presence of these children in the State of Texas. And further, that Shirley Huffstetter, Secretary of Education, should meet with Hispanic and other leaders, and attorneys representing the undocumented children in Texas, to resolve her agency's position on this issue;

3. Attorney General Benjamin Civiletti should issue a policy directive to the Immigration and Naturalization Service (INS) ordering that INS local offices should discontinue their current practice of entering into agreements with local police agencies whereby the local police agency detains people suspected of being present in the United States in violation

of the Immigration Act for INS investigation. INS agents should not authorize local police to detain a person for further INS investigation unless the person is being detained pursuant to an independent state criminal charge or when undocumented person has been released pursuant to a State bond, case was dismissed or released pursuant to any other State regulation. And, INS agents should only authorize local police to hold such a person for INS investigation for a maximum of twenty-four (24) hours after they would otherwise be released from custody on the independent state criminal charge which initially caused their arrest or detention;

4. In light of the important services which are currently provided by attorneys and paralegals of the Legal Services Corporation, assisting families to reunite through the immigration process, assisting persons with equities in the United States in deportation proceedings, and assisting refugees who come to the United States, Congress should not impose restrictions in the Legal Services Corporation Act which would preclude representation of indigent non-citizens in need of legal assistance. Such a restriction would further institutionalize the exploitation of non-citizens and this in turn would negatively impact on all minority communities.

5. The Attorney General and INS Commissioner should explore resolution of the pending class action case entitled Vallejo v. INS, pending in the Federal District Court, Central District of California, which seeks to return to the pre-1979 INS practice of advising arrested persons of their rights to counsel and to remain silent prior to interrogation. The Attorney General should require reversal of the current INS practice which provides that arrested persons are only advised of their rights to counsel

and to remain silent subsequent to interrogation;

6. The Attorney General should issue a policy directive immediately suspending all INS strip and cavity searches of women who are detained by INS or are detained by local police agencies for INS. Such searches should only be authorized upon probable cause, based upon articulable facts, to believe that the detained person is in possession of a concealed weapon or contraband;

7. INS should adopt a uniform national bail procedure, including the standards currently found in the Federal Bail Reform Act. And further, that INS should take into consideration the special problems encountered by persons seeking release from INS custody in those States which, due to local laws, do not have the services of bail bondsmen available to facilitate release from custody;

8. The President of the United States should issue an Executive order allowing all class members in the case of Silva v. Levi to adjust their status here in the United States without having to return to Mexico to finalize their immigration status.

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